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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 1009

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, PETITIONER.

THE UNITED STATES OF AMERICA

No. 1010

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, ET AL., PETITIONERS.

THE UNITED STATES OF AMERICA

No. 1011

LUMBER PRODUCTS ASSOCIATION, INC., ACME MANUFACTURING
CO., INC., EUREKA SASH, DOOR & MOULDING MILLS, ET AL.,
PETITIONERS.

THE UNITED STATES OF AMERICA

No. 1012

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES
COUNCIL, PETITIONER.

THE UNITED STATES OF AMERICA

No. 1013

BOORMAN LUMBER COMPANY, HOGAN LUMBER COMPANY, LOOP
LUMBER & MILL COMPANY, ET AL., PETITIONERS.

THE UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { NOVEMBER 11, 1944.
NOVEMBER 12, 1944.

CERTIORARI GRANTED JANUARY 2, 1945.

No. 10011

United States
Circuit Court of Appeals
For the Ninth Circuit.

LUMBER PRODUCTS ASSOCIATION, INC.,
a corporation, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Four Volumes
VOLUME I
Pages 1 to 475

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States of America
for the Northern District of California,
Southern Division.

March 1940 Term

No. 26977-S

United States of America

Northern District of California

Southern Division—ss.

INDICTMENT [1*]

The Grand Jurors of the United States of America, duly empaneled, sworn, and charged in the Dis-

*Page numbering appearing at foot of page of original certified Transcript of Record.

trict Court of the United States for the Southern Division of the Northern District of California, at the July 1939 Term of said Court, having begun but not finished during said July 1939 Term of said Court an investigation of the matters charged in this indictment, and having continued to sit, by order of said Court, in and for said Division and District during the November 1939 and March 1940 Terms of said Court for the purpose of finishing said investigation begun but not finished during the July 1939 Term of said Court, inquiring for said Division and District at the March 1940 Term of said Court, do upon their oaths find and present as follows:

I.

PERIOD OF TIME COVERED BY THE
INDICTMENT

1. Each allegation made in this indictment that an act has been done by defendants herein or by any corporations, associations, or individuals, shall be deemed to refer to the period beginning September 1, 1936, the exact date being to the Grand Jurors unknown, and continuing up to the date of the presentation of this indictment, unless otherwise expressly stated.

II.

DEFINITIONS OF TERMS

2. The term "millwork and patterned lumber" as used herein shall mean lumber which has been planed, cut, or assembled into standard or special patterns or forms, such as moulding, sash, doors,

tongue and groove pattern, shelf pattern, flooring, easing, rustic ceiling, rustic siding, and other wood products prepared [2] for use in the construction of dwellings, buildings, fixtures, and store fronts. It shall also include all wood and the products thereof used in the construction of prefabricated buildings.

3. The term "San Francisco Bay Area" when used herein shall mean the counties of San Francisco, Marin, Contra Costa, Alameda, Santa Clara, and San Mateo, of the State of California.

III.

NATURE OF INTERSTATE COMMERCE INVOLVED

4. Millwork and patterned lumber has been and is manufactured in the State of California and in the San Francisco Bay Area, as well as in a number of states of the United States other than the State of California. Prior to the formation of the combination and conspiracy hereinafter alleged, the 80% of all millwork and patterned lumber used in the San Francisco Bay Area was manufactured in the States of Washington and Oregon and in other states outside of California, and was shipped in interstate commerce into the San Francisco Bay Area. Since the formation of the combination and conspiracy hereinafter alleged, such interstate shipments of millwork and patterned lumber have decreased until, at the present time, less than 10% of the millwork and patterned lumber used in the San Francisco Bay Area is shipped into the area from with-

out the State of California. Numerous manufacturers of millwork and patterned lumber, whose mills are located in the States of Washington and Oregon and in other states outside of California have desired and do now desire to sell millwork and patterned lumber manufactured in their said mills to lumber yards and jobbers located in the San Francisco Bay Area for use in the construction of houses, dwellings, buildings, store fronts, and fixtures, but are unable to do so because of the combination and conspiracy hereinafter alleged. [3]

5. Prior to the formation of the combination and conspiracy hereinafter alleged, the millwork and patterned lumber manufactured in states other than California for use in the San Francisco Bay Area was consigned to builders, building contractors, and millwork jobbers located in the San Francisco Bay Area and shipped in interstate commerce directly to the buildings under construction, or was consigned to lumber yards and jobbers located in the San Francisco Bay Area and shipped in interstate commerce to said lumber yards and jobbers for delivery by them to specific jobs in said area.

6. Millwork and patterned lumber manufactured in the States of Washington and Oregon and in other states outside of California and shipped into the San Francisco Bay Area is usually manufactured at the mills in large quantities by the largest and finest machines available, by mass production methods which often complete, or partially complete, the millwork and patterned lumber in the same

operation that manufactures the lumber from the log. Millwork manufacturers located in the San Francisco Bay Area, including those named as defendants herein, are not, and never have been, mechanically equipped to manufacture millwork and patterned lumber as economically or efficiently, or in as large quantities, or of as high a quality, as is possible in mills located in states other than California in closer proximity to lumber production areas. In addition to the savings accruing by reason of mass production methods said millwork and patterned lumber manufacturers of Washington and Oregon, as well as other states outside of California, while employing union labor and operating entirely union shops, have a lower wage scale than the millwork and patterned lumber manufacturers in the San Francisco Bay Area. This condition [4] existed at the time of the conspiracy and combination hereinafter alleged and has continued at all times during the period of time covered by this indictment.

IV.

THE DEFENDANTS

7. The Lumber Products Association, Inc., referred to hereinafter as "LPA" and included in the designation "Defendant Manufacturers", is hereby indicted and made a defendant herein. Defendant LPA is a corporation organized, existing, and authorized to do business under and by virtue of the laws of the State of California, with its principal place of business at 3196 Twenty-Fourth Street,

San Francisco, California. Since its incorporation in November 1938, defendant LPA has been and is engaged in the business of furnishing to manufacturers and dealers in millwork and patterned lumber certain services which include, among others, trade promotion, cost and price statistics, sales lists, and labor counsel. Manufacturers and dealers to whom such services are rendered by defendant LPA are known as "members" and pay a fee therefor to LPA. Prior to the incorporation of LPA, manufacturers and dealers in millwork and patterned lumber, located in the City and County of San Francisco, secured such services from a voluntary association known as Lumber Products Association of San Francisco. Defendant LPA succeeded to and now continues to carry out the functions of said Lumber Products Association of San Francisco. The members of LPA collectively sell at least 75% of the total millwork and patterned lumber sold in the City and County of San Francisco, California. During the year 1939 defendant LPA had twelve members, including the corporations, firms, and individuals hereinafter named as defendants in paragraph 8 hereof, which defendants sold approximately 80% of the [5] total millwork and patterned lumber sold by all LPA members. Since the incorporation of LPA, the defendants named in paragraph 8 hereof have controlled and do control and dominate the actions of defendant LPA by selecting from among themselves the officers, directors, and committees of said defendant.

8. The following named individuals, partnerships and corporations, hereinafter included in the designation "Defendant Manufacturers", are hereby indicted and made defendants herein. Each of said defendants is a member of LPA and is engaged in the manufacture and sale of millwork and patterned lumber in the San Francisco Bay Area and more particularly in the City and County of San Francisco. The legal status and principal place of business or residence of the owners are indicated below.

Name	Legal Status	Names of Partners or Individual	Principal Place of Business or Residence	State of Incorporation
Aeme Manufacturing Co., Inc.	Corporation		345 Bay Shore Boulevard San Francisco	California
J. A. Hart Mill & Lumber Co.	Individual	John A. Hart	Jerrold and Napoleon Streets San Francisco	
Warden Brothers	Partnership	Anna K. Warden Carl A. Warden	2501 Army Street San Francisco	
Brannan Street Planing Mill	Partnership	Albert B. Veyhle and Charles Gustafson	560 Brannan Street San Francisco	
W. P. Holmes Mill & Cabinet Shop	Individual	William P. Holmes	Sixth and Channel Streets San Francisco	
Sage & Wilder	Partnership	Jesse L. Sage Christian A. Wilder	2156 San Bruno Avenue San Francisco	
Liberty Mill & Cabinet Shop	Individual	Bernard Tanklage	1433 Van Dyke Avenue San Francisco	
Eureka Sash, Door & Molding Mills	Corporation		1715 Mission Street San Francisco	[6] California

9. Wood Products, Inc., referred to hereinafter as "Wood Products" and included in the designation "Defendant Manufacturers", is hereby indicted and made a defendant herein. Defendant Wood Products is a corporation organized, existing, and authorized to do business under and by virtue of the laws of the State of California, with its principal place of business at 1924 Broadway, Oakland, California. Since its incorporation in April 1939, defendant Wood Products has been and is engaged in the business of furnishing to manufacturers and dealers in lumber and millwork certain services which include, among others, trade promotion, cost and price statistics, sales lists, and labor counsel. Manufacturers and dealers receiving such services from Wood Products are known as "subscribers" and pay a fee for the services rendered to them. Prior to the incorporation of defendant Wood Products, manufacturers and dealers in millwork and patterned lumber located in the City of Oakland, California, secured such services from an unincorporated association known as the East Bay Mill Owners Association. Defendant Wood Products succeeded to and now continues to carry out the functions of said East Bay Mill Owners Association. The subscribers composing defendant Wood Products sell at least 75% of the total millwork and patterned lumber sold in the City of Oakland, California. During the year 1939 defendant Wood Products had approximately sixty-five subscribers, which number included the corporations, firms, and individuals named as defendants [7] in

paragraph 10 hereof, which defendants sold 80% of the total millwork and patterned lumber sold by Wood Products subscribers.

10. The following named individuals, partnerships, and corporations, included in the designation "Defendant Manufacturers", are hereby indicted and made defendants herein. Each of said defendants is a subscriber to the services of defendant Wood Products and is engaged in the manufacture and sale of millwork and patterned lumber in the San Francisco Bay Area and more particularly in Alameda County. The legal status and principal place of business or residence of the owners are indicated below.

Name	Legal Status	Names of Partners or Individual	Principal Place of Business or Residence	State of Incorporation
Boorman Lumber Co.	Corporation		1003 East 14th Street, Oakland	California
Hill Lumber & Hardware Company	Corporation		Brighton and Alameda Streets, Albany	California
Hogan Lumber Co.	Corporation		255-2nd Street Oakland	California
Loop Lumber & Mill Company	Corporation		Broadway and Blanding, Alameda	California
Loop Lumber Co.	Corporation		Foot of 16th Street San Francisco	California
San Leandro Mill & Lumber Co.	Individual	Robert W. Shannon	400 Davis Street San Leandro	
San Pablo Lumber Co.	Partnership	Andrew Nelson Albert C. Nelson	10th and Ohio Streets, Richmond	
Smith Lumber Company	Corporation		19th Avenue and Estuary, Oakland	California
Tilden Lumber Company	Corporation		Foot of University Avenue, Berkeley	California [8]
E. K. Wood Lumber Company	Corporation		Frederick and King Streets, Oakland	California
Zenith Mill & Lumber Company	Corporation		2101 East 12th Street Oakland	California
Eureka Mill & Lumber Co.	Corporation		3737 San Leandro Street, Oakland	California
Hayward Mill & Lumber Co.	Individual	Nels E. Nelson	1 Castro Street Hayward	

11. Commercial Fixture and Store Front Institute, hereinafter designated as "Commercial Fixture" and included in the designation "Defendant Manufacturers", is hereby indicted and made a defendant herein. Said defendant Commercial Fixture is a corporation, organized and authorized to do business, under and by virtue of the laws of the State of California, with its principal place of business at 74 New Montgomery Street, San Francisco, California. Since its incorporation in January 1939 defendant Commercial Fixture has been and now is engaged in the business of furnishing to manufacturers and dealers in millwork and patterned lumber certain services which include, among others, trade promotion, cost and price statistics, sales lists, and labor counsel. Manufacturers and dealers receiving such services from Commercial Fixture are known as "members" and pay a fee for the services rendered to them. Prior to the incorporation of defendant Commercial Fixture the manufacturers and dealers now members of said defendant secured such services from a corporation known as "Cabinet Manufacturing & Lumber Products, Inc." Defendant Commercial Fixture succeeded to and now continues [9] to carry out the functions of said Cabinet Manufacturing & Lumber Products, Inc. Defendant Commercial Fixture has twelve members, including the corporations, firms and individuals named as defendants in paragraph 12 hereof, which defendants do in the aggregate more than 90% of the construction of cabinets and store fronts in the San Francisco Bay Area.

12. The following named individuals, partnerships, and corporations, hereinafter included in the designation "Defendant Manufacturers", are hereby indicted and made defendants herein. Each of said defendants is a member of defendant Commercial Fixture and is engaged in the manufacture and sale of millwork and patterned lumber in the San Francisco Bay Area. The legal status and principal place of business or residence of the owners are indicated below.

Name	Legal Status	Names of Partners or Individual	Principal Place of Business or Residence	State of Incorporation
Mullen Manufacturing Company	Corporation		64-80 Rausch St. San Francisco	California
Mangrum, Holbrook & Elkus	Corporation		301 Golden Gate Avenue, San Francisco	California
Ful-Vue Fixture Co.	Individual	Joseph J. Schmidt	75 Oak Grove St. San Francisco	
Fink & Schindler Co.	Corporation		552 Brannan St. San Francisco	California
Exposition Wood Working Co.	Partnership	George Randolph Herman Sichel	661 Golden Gate Avenue San Francisco	
L. & E. Emanuel, Inc.	Corporation		2665 Jones St. San Francisco	California
Wm. Bateman	Partnership	Ella Bateman Jessie Bateman Phylliss Dennis	1915 Bryant St. San Francisco	
Uni-Bilt Fixture Co.	Individual	Leo Roselyn	298-8th St. San Francisco	
H. Schulte & Son	Individual	Henry A. Schulte	39-40 Rodgers St. San Francisco	
Ostlund & Johnson	Individual	Oscar H. Ostlund	1901 Bryant St. San Francisco	
Brass & Kuhn Company	Corporation		1917 Bryant St. San Francisco	California
S. Kuleher & Co.	Individual	S. Kuleher	731 East Tenth St. Oakland	

13. The following named corporations, hereinafter included in the designation "Defendant Manufacturers", are hereby indicted and made defendants herein. Each of said defendants is duly authorized to do business under and by virtue of the laws of the State of California, and has its principal place of business as indicated. Each of said defendants is engaged in the business of manufacturing and selling millwork and patterned lumber.

Name of Corporation	Principal Place of Business	State of Incorporation
Pacific Manufacturing Co.	Santa Clara, Calif.	California
Redwood Manufacturers Co.	Pittsburg, Calif.	California

14. The United Brotherhood of Carpenters and Joiners of America, hereinafter included in the designation "Defendant Unions", having its headquarters and general offices at Indianapolis, Indiana, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is a national trade union of carpenters and joiners and has a membership of approximately 350,000 persons. It is affiliated with and acts as advisor to, supervisor of, and governing body for carpenters' local unions and carpenters' district and state councils in the United States of America, including the Bay Counties District Council of Carpenters, and other local union organizations named as defendants herein. [11]

15. The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, hereinafter included in the

designation "Defendant Unons", having its general offices and principal place of business at 200 Guerrero Street, San Francisco, California, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is advisor to, supervisor of, and governing body for local millmen's and carpenters' unions in the San Francisco Bay Area, including the local union organizations named as defendants herein. It is affiliated with the United Brotherhood of Carpenters and Joiners of America. Its membership consists of delegates from the affiliated local unions.

16. The San Francisco Building and Construction Trades Council, hereinafter included in the designation "Defendant Unions", having its general offices and principal place of business at 200 Guerrero Street, San Francisco, California, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is advisor to, supervisor of, and governing body for unions composed of laborers engaged in building and construction trades in the City and County of San Francisco, California. Its membership consists of delegates from the affiliated local unions.

17. The Alameda County Building and Construction Trades Council, hereinafter included in the designation "Defendant Unions", having its principal place of business and general offices at 2111 Webster Street, Oakland, California, is hereby indicted and made a defendant herein. Said defendant is a volun-

tary, unincorporated association of individuals. It is advisor to, supervisor of, and governing body for unions composed of laborers engaged in building and construction trades in the County of Alameda, California. Its [11a] membership consists of delegates from the affiliated local unions.

18. The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, hereinafter included in the designation "Defendant Unions", having its headquarters and principal offices at 200 Guerrero Street, San Francisco, California, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is a trade union of millworkers, and is affiliated with the United Brotherhood of Carpenters and Joiners of America, the Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and with the other local union organizations named as defendants herein. Said defendant is sometimes referred to hereinafter as Millmen's Union No. 42.

19. The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, hereinafter included in the designation "Defendant Unions", having its headquarters and principal offices at 2111 Webster Street, Oakland, California, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is a trade union of millworkers, and is affiliated with the United Brotherhood of Carpen-

ters and Joiners of America, the Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and with the other local union organizations named as defendants herein. Said defendant is sometimes referred to hereinafter as Millmen's Union No. 550.

20. The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, hereinafter included in the designation "Defendant Unions", having its headquarters and principal offices at Pittsburg, California, is hereby indicted and made a [12] defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is a trade union of millworkers, and is affiliated with the United Brotherhood of Carpenters and Joiners of America, the Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and with the other local union organizations named as defendants herein.

21. The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, hereinafter included in the designation "Defendant Unions", having its headquarters and principal offices at Santa Clara, California, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is a trade union of millworkers, and is affiliated with the United Brotherhood of Carpenters and Joiners of America, and with the other local union organizations named as defendants herein. Said defendant is sometimes referred to hereinafter as Millmen's Union No. 262.

22. The following named individuals are hereby indicted and made defendants herein (Christian names unknown to the Grand Jurors being indicated by initial letters or by the designation "John Doe"). Each of said individual defendants, during part or all of the period covered by the indictment, has been actively engaged in the management, direction, or control of the affairs, policies, and acts of the respective defendant manufacturers or unions indicated, and has authorized, ordered, or done acts constituting the offense hereinafter charged in the indictment.

Carl Warden, president of The Lumber Products Association, Inc., and partner in Warden Bros.

Harry W. Gaetjen, secretary of The Lumber Products Association, Inc. [13]

Charles Monson, president of The Lumber Products Association, Inc., and president of the Acme Manufacturing Co., Inc.

Fred Spencer, president of the Eureka Sash Door & Moulding Mills.

D. N. Edwards, a director of Wood Products, Inc.

Gordon D. Pierce, president of the Boorman Lumber Co.

Albert P. Hill, president of the Hill Lumber & Hardware Company.

Thomas P. Hogan, Jr., president of the Hogan Lumber Co.

William Chathan, president of the Loop Lumber & Mill Company.

Reginald Smith, vice-president of the Smith Lumber Company.

Victor J. Herrmann, president of the Tilden Lumber Company.

John B. Wood, vice-president of the E. H. Wood Lumber Company.

Roy M. Dreisbach, vice-president of the Zenith Mill & Lumber Company.

Clarence I. Gilbert, president of the Eureka Mill & Lumber Co.

John Mullen, president of the Commercial Fixture and Store Front Institute.

J. G. Ennes, secretary-manager of the Commercial Fixture and Store Front Institute.

Eugene S. Elkus, president of Mangrum, Holbrook & Elkus.

Charles F. Stauffacher, president of the Fink & Schindler Co.

Joseph L. Emanuel, president of L. & E. Emanuel, Inc.

Richard Kuhn, president of Brass & Kuhn Company.

J. L. Pierce, president of the Pacific Manufacturing Company.

C. J. Wood, president of the Redwood Manufacturers Company.

J. F. Cambiano, a duly authorized and acting representative of the International Brotherhood of Carpenters and Joiners of America, and

president of the State Council of Carpenters. Dave Ryan, secretary of the Bay Counties District Council of Carpenters and secretary of the State Council of Carpenters.

James Ricketts, a duly authorized and acting representative of the San Francisco Building and Construction Trades Council.

John Doe McGinnis, a duly authorized and acting representative of the Alameda County Building and Construction Trades Council. [14]

Charles Roe, a duly authorized and acting representative of the Alameda County Building and Construction Trades Council.

Charles Helbing, business agent of Millmen's Union No. 42.

D. J. Edwards, president of Millmen's Union No. 42.

W. P. Kelly, president of Millmen's Union No. 42.

H. Lidley, president of Millmen's Union No. 42.

W. L. Wilcox, president and business agent of Millmen's Union No. 42.

Walter O'Leary, business agent of Millmen's Union No. 550.

M. D. Cicinato, president of Millmen's Union No. 550.

J. P. Sholden, president of Millmen's Union No. 550.

C. H. Irish, president of Millmen's Union No. 550.

John Doe Smoot, president of Millmen's Union No. 262.

Otto W. Sammet, a duly authorized and acting representative of Millmen's Union No. 42.

Emil H. Ovenberg, a duly authorized and acting representative of Millmen's Union No. 550.

V.

POWER OF DEFENDANTS IN CONCERT TO
RESTRAIN AND OBSTRUCT INTER-
STATE COMMERCE.

23. Substantially all of the millwork and patterned lumber manufactured in the San Francisco Bay Area is manufactured by the millwork and patterned lumber manufacturers who are named as defendants in paragraphs 7 through 13 of this indictment. Said manufacturers employ only those millworkers who are affiliated with the union organizations named as defendants in paragraphs 14 through 21 inclusive of this indictment.

24. All laborers in the San Francisco Bay Area who are skilled in the work incident to the manufacture and installation of millwork and patterned lumber must be affiliated with the union organizations made defendants in paragraphs 14 through 21 inclusive of this indictment in order to be employed by defendant manufacturers. [15].

25. As a result, the defendant unions have obtained control of the supply of workmen available to perform the work incident to the manufacture and

installation of millwork and patterned lumber in the San Francisco Bay Area. All of the defendant unions are affiliated with the American Federation of Labor and are represented upon the Alameda County Building and Construction Trades Council or upon the San Francisco Building and Construction Trades Council, which organizations are composed of representatives of substantially all local building and construction trade unions in the San Francisco Bay Area. In this manner the defendant unions have been able to and have obtained from said councils, and other labor unions engaged in the building and construction industry in said area, assistance and cooperation in securing the observance of and compliance with the rules, regulations, and policies which have been promulgated by said defendant unions. All laborers who are members of, or who are affiliated with defendant unions are bound to observe the rules, regulations, policies, and obligations of said defendants.

COUNT ONE

VI.

THE CONSPIRACY

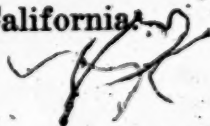
26. Beginning on or about September 1, 1936, the exact date being to the Grand Jurors unknown, and continuing to the date of the presentation of this indictment, in the Northern District of California and within the jurisdiction of this Court, the defendants herein named and other persons to the Grand Jurors unknown, well knowing all of the foregoing facts,

have combined and conspired together for the purpose of unduly, unreasonably, and directly restraining interstate trade and commerce in millwork and patterned lumber as above defined, and, as intended by them, have [16] unduly, unreasonably, and directly restrained said interstate trade and commerce. In so doing, the defendants have then and there engaged in an unlawful combination and conspiracy in restraint of the trade and commerce in millwork and patterned lumber among the several states of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act. Said combination and conspiracy is hereinafter more particularly described.

27. The general purpose, object, and effect of the said unlawful combination and conspiracy has been and is:

(a) To exclude manufacturers of millwork and patterned lumber located in states other than California from selling millwork and patterned lumber in the San Francisco Bay Area and from shipping such millwork and patterned lumber in interstate trade and commerce into the San Francisco Bay Area.

(b) To curtail, restrict, and prevent lumber yards and jobbers in the San Francisco Bay Area from purchasing and shipping, or causing to be shipped in interstate commerce into the San Francisco Bay Area, millwork and patterned lumber manufactured in states other than California.



(c) To raise, fix, stabilize, and maintain prices for millwork and patterned lumber shipped in interstate commerce into the State of California for sale in the San Francisco Bay Area.

28. For the purpose of effectuating said unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce, defendants have employed divers means and methods, including those hereinafter alleged, and other means and methods to [17] the Grand Jurors unknown:

(a) During the year 1936, the exact date being to the Grand Jurors unknown, the defendant manufacturers agreed to accede and did accede to wage scale demands of defendant unions, in return for which the defendant unions agreed to engage and have engaged in activities which were intended to prevent and did prevent the sale and shipment of millwork and patterned lumber into the San Francisco Bay Area by manufacturers located outside the State of California.

(b) Pursuant to said understanding set out in paragraph 28, subparagraph (a), the defendants, on or about the 21st day of September, 1936, entered into a contract and agreement covering the wages to be paid to the members of defendant unions, in which said agreement it was further agreed that: "... no material will be purchased from, and no work will be done on any material or article that has had any operation

performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement." (except certain named items).

(c) The defendants have continued, in full force and effect, by subsequent agreements and understandings, the provisions of said agreement described in paragraph 28, subparagraph (b) with reference to the restriction on millwork and patterned lumber manufactured at lower wage rates than those then in force in the San Francisco Bay Area.

(d) In order to enforce the provisions of the con- [18] tract and agreement described in paragraph 28, subparagraph (b) hereof, the defendants have, at all times during the period covered by this indictment, maintained a joint conference board composed of representatives of the defendant manufacturers and representatives of the defendant unions.

(e) The joint conference board described in paragraph 28, subparagraph (d) hereof, has held regular weekly meetings (the exact dates of which are to the Grand Jurors unknown), for the purpose of supervising, and it has supervised and carried on, the enforcement of the provisions of the contract, agreements and understandings set out in paragraph 28, subparagraphs (b) and (c) hereof.

(f) Defendants have at various times in-

terchanged information relative to the shipments of millwork and patterned lumber to the San Francisco Bay Area from states other than California for the purpose of enforcing the provisions of the contract, agreements, and understandings described in paragraph 28, subparagraphs (b) and (c) hereof.

(g) Defendants have counseled together, advised, and agreed upon courses of action relative to the enforcement of the provisions of said contract, agreements and understandings described in paragraph 28, subparagraphs (b) and (c) hereof.

(h) Defendants, in June 1937 (the exact date being to the Grand Jurors unknown) prevented the sale and delivery of a carload of millwork and patterned lumber in the San Francisco Bay Area, which had been shipped in interstate commerce from the Ewauna Box Company at Klamath [19] Falls, Oregon, to Chris M. Wininger for sale in the San Francisco Bay Area; and the defendants have, on other dates unknown to the Grand Jurors, prevented the sale and delivery of carloads of millwork and patterned lumber in the San Francisco Bay Area which had been shipped in interstate commerce from states other than California for sale in the San Francisco Bay Area.

(i) Defendants, in June 1938 (the exact date being to the Grand Jurors unknown), by means of pickets and threats to picket, forced the

Jones Hardwood Company of San Francisco to cancel an order for millwork and patterned lumber from the Roddis Lumber and Veneer Company of Marshfield, Wisconsin, which millwork and patterned lumber was to have been shipped in interstate commerce to the San Francisco Bay Area; and the defendants have, at various dates to the Grand Jurors unknown, forced other purchasers of millwork and patterned lumber to cancel orders for millwork and patterned lumber from manufacturers located in states other than California.

(j) Defendants, in furtherance of said combination and conspiracy hereinabove alleged, did, in January 1938, the exact date being to the Grand Jurors unknown, and on various other occasions, the exact dates being to the Grand Jurors unknown, by means of pickets and threats to picket, prevent the unloading of railroad freight cars bearing millwork and patterned lumber in transit from states other than California to the San Francisco Bay Area, and have thus restrained and prevented the purchase of millwork and patterned lumber from manufacturers located in states other than California for shipment and delivery to the San Francisco Bay Area. [20]

(k) Defendants, in furtherance of the combination and conspiracy hereinabove alleged, have and do at regular intervals publish and circulate, or cause to be published and circu-

lated among millwork and patterned lumber manufacturers in the San Francisco Bay Area (including those named as defendants herein), and among jobbers and lumber yards in said area, certain price lists and market reports, which lists set out, among other things, the agreed price to be charged for millwork and patterned lumber in the San Francisco Bay Area, which price lists and market reports were designed and intended to be used, and were and are used, as price lists in the sale of millwork and patterned lumber in the San Francisco Bay Area by said millwork and patterned lumber manufacturers, jobbers, and lumber yards, which has resulted in raising, maintaining, and stabilizing the price of millwork and patterned lumber in said area at an unreasonable, artificial, and noncompetitive price.

29. In joining the said combination, agreement, and conspiracy, and in performing and carrying out acts to effectuate the said conspiracy, the defendant unions were not attempting to enforce or protect the right to bargain collectively nor did they act in the course of a legitimate labor dispute as to wages, hours, and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the said combination and conspiracy was directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area and to maintain arbitrary, artificial, and noncompetitive prices. [21]

VII.

EFFECT OF CONSPIRACY

30. The things done and the acts performed pursuant to and in furtherance of the combination herein alleged and described have had the effect of preventing persons, partnerships, and corporations located in the San Francisco Bay Area from purchasing millwork and patterned lumber manufactured in states other than California for shipment into the San Francisco Bay Area. As a result of said combination and conspiracy, the prices of millwork and patterned lumber used in the construction of homes and other buildings in the San Francisco Bay Area have been arbitrarily, unduly and unreasonably increased.

VIII.

JURISDICTION AND VENUE

31. The combination and conspiracy hereinbefore alleged has been formed and carried on by the defendants within the Southern Division of the Northern District of California, and has continued therein from the day of its formation to and including the date of the presentation of this indictment. Throughout the period covered by this indictment, all of the acts and things alleged in paragraph 28 of this indictment have been done and have taken place within the said District.

COUNT TWO

32. The language of paragraphs 1 to 25—28 and 29 inclusive of this indictment is hereby realleged and incorporated herein as if hereinafter set forth in full.

IX.

THE CONSPIRACY

33. And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that, during the period aforesaid and continuously therein up to and including the date of the presentment of this indictment, in the Northern District of California and within the jurisdiction of this Court, all of the defendants [22] named herein and other persons to the Grand Jurors unknown, well knowing all the facts hereinbefore alleged in this indictment, unlawfully have combined and conspired together and engaged with one another in an attempt to monopolize part of the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay Area in the State of California. In so doing, the defendants have then and there combined and conspired among themselves to monopolize and did attempt to monopolize a part of the trade and commerce in millwork and patterned lumber among the several states, in violation of Section 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", known as the Sherman Act.

34. It was and is a part of said combination and conspiracy and the object and purpose thereof to accomplish and do the following, among other things, to wit:

(a) To create and maintain among the defendants a monopoly of the business of selling and distributing millwork and patterned lumber shipped in interstate commerce into the San Francisco Bay Area;

(b) To prevent, eliminate, and suppress all competition in the manufacture and sale of millwork and patterned lumber from manufacturers and dealers outside of the San Francisco Bay Area and the State of California;

(c) To establish and maintain uniform, monopolistic and noncompetitive prices for the sale of millwork and patterned lumber shipped in interstate commerce into the San Francisco Bay Area;

(d) To eliminate and prevent all millwork and pat- [23] terned lumber manufacturers and dealers, other than those having their principal place of business and mill in the San Francisco Bay Area, from engaging in the sale and distribution of millwork and patterned lumber in said area. .

35. Said unlawful attempt to monopolize the sale of millwork and patterned lumber in interstate trade and commerce was intended to be effected, and has been effected in part by divers means and methods

including, among others, the following, that is to say:

(a) Contracts were entered into between the defendants which provided, among other things: "that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement" (excepting certain named items);

(b) The defendant unions have from time to time demanded that millwork and patterned lumber be purchased only from manufacturers acceptable to said unions;

(c) The agreements and demands aforesaid were enforced by picketing, threatened picketing, and divers other means of intimidation and coercion.

X.

JURISDICTION AND VENUE

36. The said combination and conspiracy to monopolize a part of the interstate trade and commerce in millwork and patterned lumber was formed in the San Francisco Bay Area in the Southern Division of the Northern District of California, and all of the acts and things set out in paragraph 35 of this [24] indictment have been done and have taken place within the said District.

37: And so the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the defendants named at the time and place and in the manner and form aforesaid, unlawfully have combined and conspired to restrain trade and commerce in millwork and patterned lumber in the several states of the United States and have attempted to monopolize millwork and patterned lumber shipped in interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such cases made and provided.

FRANK J. HENNESSY

United States Attorney

TOM C. CLARK

MORRIS R. CLARK

CHARLES S. BURDELL

JAMES E. HARRINGTON

Special Assistants to the Attorney General

Attorneys for the United States of America

A True Bill:

GEO. A. VAN SMITH,

Foreman. [25]

[Endorsed]: A True Bill.

GEORGE A. VAN SMITH,

Foreman.

Presented in open Court and Ordered filed June 26, 1942.

Bail, \$1000.00 each: [26]

District Court of the United States
Northern District of California
Southern Division

No. 26977.

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 15th day of July, in the year of our Lord one thousand nine hundred and forty.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

ARRAIGNMENT

This case came on this day for arraignment of the defendants. The hereinafter named defendants were present.

Acme Manufacturing Co.,

by Charles Monson, its President;

Brannan Street Planing Mill,

by Charles Gustafson;

Eureka Sash Door & Moulding Mills,

by Fred Spencer, Vice-President;

J. A. Hart Mill & Lumber Co.,

by J. A. Hart, Owner;

The Lumber Products Association, Inc.,

by Charles Monson, President, [27]

Sage & Wilder,

by Christian Wilder, Partner;

W. P. Holmes Mill & Cabinet Shop,

by William P. Holmes, Owner;

Warden Brothers,

by Carl Warden, Partner;

Harry W. Gaetjen; Charles Monson; Fred Spencer;
Carl Warden; were present in Court with J. M.
Thomas, Esq., their Attorney.

The Alameda County Building and Construc-
tion Trades Council,

by Charles Roe;

The Bay Counties District Council of Carpen-
ters of the United Brotherhood of Carpenters
and Joiners of America

by David Ryan, Secretary;

The United Brotherhood of Carpenters and
Joiners of America Millmen's Union No. 42,

by Charles Helbing;

The United Brotherhood of Carpenters and
Joiners of America Millmen's Union No. 550.

by Emil Ovenberg;

J. F. Cambiano; D. J. Edwards; Charles Helbing;
C. H. Irish; W. P. Kelly; * * * ; Walter O'Leary;
Emil H. Ovenberg; * * * ; Charles Roe; Dave Ryan;
* * * ; * * * ; * * * ; * * * ; W. L. Wilcox were pres-
ent in Court with Hugh K. McKevitt, Esq., their
Attorney. [28]

Boorman Lumber Co.,

by George Clayberg, Manager;

Eureka Mill & Lumber Co.,
 Hayward Mill & Lumber Co.,
 by Nels C. Nelson, Owner;

* * * * *

Hogan Lumber Co.,
 by Thomas P. Hogan, Jr., President;
 San Leandro Mill & Lumber Co.,
 by R. W. Shannon, Owner;
 San Pablo Lumber Co.,
 by A. C. Nelson, Partner,

~~Tilden~~ Lumber Co.,
 by Victor J. Herrmann, President;
 E. K. Wood Lumber Company;
 by John B. Wood, President;
 Wood Products, Inc.,
 by David N. Edwards, Director;
 Zenith Mill & Lumber Co.;

D. N. Edwards; Victor J. Herrmann; * * * * *;
 Thomas P. Hogan, Jr.; and John B. Wood; were
 present in Court with their Attorney Morgan J.
 Doyle, Esq.

* * * * *

Loop Lumber Co.,
 by William Chatham, President;
 Loop Lumber & Mill Company,
 by William Catham, President.

William Catham; were present in Court with their
 Attorney, Howell Lovell, Esq. [29]

* * * * *

Smith Lumber Co.,
 by Reginald Smith, Vice-President;

and Reginald Smith were present in Court with their Attorney, M. R. Carey, Esq.

Charles Burdell, Esq., Special Assistant to the Attorney General, was present for and on behalf of the United States:

Thereupon the foregoing defendants were called for arraignment. Said defendants were informed of the return of the Indictment by the United States Grand Jury and asked if they were the persons named therein and, upon their answer that they were, and that their true names were as hereinbefore stated, said defendants were informed of the charges against them, and stated they understood the same. The respective Attorneys, on behalf of the defendants, orally waived the reading of the Indictment.

Mr. McKevitt advised the Court that he was appearing specially upon behalf of the United Brotherhood of Carpenters and Joiners of America, and stated that its true name was as charged.

Upon motions of the Attorneys for the respective defendants, and with the consent of Mr. Burdell, It Is Ordered that this case be and the same is hereby continued [30] to August 19, 1940, for entry of the pleas of the said defendants.

United States District Court
Northern District of California
Southern Division

No. 26977S

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

LUMBER PRODUCTS ASSOCIATION, INC.,
et al,

Defendants.

DEMURRER OF CERTAIN DEFENDANTS
TO INDICTMENT.

Come now the defendants the United Brotherhood of Carpenters and Joiners of America, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, The Alameda County Building and Construction Trades Council, J. F. Cambiano, Dave Ryan, James Ricketts, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, H. Lidley, W. L. Wilcox, Walter O'Leary, [32] M. D. Cicinato, J. P.

Sholden, C. H. Irish, George S. Sinoot, Otto W. Sammet, and Emil H. Ovenberg, and without waiving their rights, or the rights of any of them, to hereafter plead not guilty, separately and severally file this demurrer to the indictment in the above entitled proceeding, and for grounds of demurrer each defendant specifies:

I.

That said indictment as a whole, and each count thereof considered separately, fails to allege facts sufficient to constitute a public offense under the laws of the United States.

II.

That said indictment as a whole, and each count thereof considered separately, fails to alleged facts sufficient to show the commission by these demurring defendants, or any of them, of a public offense under the laws of the United States.

III.

That said indictment does not allege facts sufficient to bring the same within the provisions of any statute of the United States, and no crime against the laws of the United States is charged in said indictment, or either count thereof, against these defendants.

IV.

That said indictment fails to allege facts sufficient to constitute a violation of Section 1, Title 15, U.S.C.A.

V.

That said indictment fails to show a violation by these demurring defendants, or any of them, of Section 1, Title 15, U.S.C.A.

VI.

That said indictment fails to allege facts sufficient to constitute a violation of Section 2, Title 15, U.S.C.A. [33]

VII.

That said indictment fails to show a violation by these demurring defendants, or any of them, of Section 2, Title 15, U.S.C.A.

VIII.

That the acts complained of in said indictment, and each count thereof, as to these defendants do not in any manner violate Sections 1 or 2, Title 15, U.S.C.A.

IX.

That as to said indictment as a whole, and each count separately, the above entitled Court is without jurisdiction of the subject matter, in that no unlawful act or thing alleged to have been done by these defendants, or any of them, relates to a transaction in interstate commerce.

X.

That said indictment as a whole is ambiguous and unintelligible and replete with redundant matter and surplusage to such an extent that these demurring defendants and each of them are not advised thereby of the nature of the charge against them, or any of them, so that they, or any of them,

may properly prepare and submit their defense thereto.

XI.

That the first alleged count contained in said indictment is duplicitious in that said count purports to contain several alleged offenses which are not separately stated, to wit: The joining and engaging in an alleged combination, the joining and engaging in an alleged conspiracy, and the doing of certain substantive acts, including the making and carrying out of a contract alleged to be in restraint of interstate commerce.

XII.

That the second alleged count contained in said indictment is duplicitious in that said count purports to contain several [34] alleged offenses which are not separately stated, to wit: The joining and engaging in an alleged combination, the joining and engaging in an alleged conspiracy, and the making of a contract to monopolize millwork and patterned lumber, and to create monopolistic and non-competitive prices therefor.

XIII.

That the first alleged count contained in said indictment is indefinite, uncertain, ambiguous and unintelligible in that it does not appear therein nor can it be ascertained therefrom

(a) What other states besides Washington and Oregon manufactured millwork and patterned lumber used in the San Francisco Bay Area and

shipped in interstate commerce, as alleged in paragraph 4, page 3, part III.

(b) Whether all manufacturers outside of California operate entirely Union shops, with a lower wage scale than the millwork and patterned lumber manufacturers in the San Francisco Bay Area, as alleged in paragraph 6, page 4, part III.

(c) Whether wood materials used by defendant manufacturers are shipped in interstate commerce;

(d) How and in what manner the affairs, policies and acts of these defendants, or any of them, constitute an offense against the laws of the United States, as alleged in paragraph 22, page 14, part IV;

(e) What acts had been done by these defendants, or any of them, constituting the alleged offense attempted to be charged in said indictment, as set forth in paragraph 21, page 14, part IV;

(f) What, if any, act has been done by these defendants, or any of them, which violates the Sherman Anti-Trust Act;

(g) The time and place of the doing of any act alleged to constitute an offense charged in the indictment; [35]

(h) What acts these defendants, and each of them, have authorized or ordered which constitute an offense against the laws of the United States;

(i) How the observance or compliance with the rules, regulations and policies promulgated by defendant Unions would constitute a public offense as alleged in paragraph 25, page 17, part V.

(j) What rules, regulations, policies or obligations of defendant Unions all affiliated laborers or members are bound to observe, and what effect such observance has upon a public offense under the laws of the United States;

(k) When and at what time and at what place each of these defendants entered the combination or conspiracy attempted to be alleged in said indictment.

(l) How and in what manner, except for the conclusion of the pleader, these defendants, or any of them, have unduly or unreasonably or directly restrained interstate trade and commerce, as alleged in paragraph 26, pages 17 and 18, part VI;

(m) How and in what manner any act or thing alleged directly affected interstate commerce or discriminated against such commerce or in any wise affected it other than incidentally with all other commerce;

(n) How the stabilization and maintenance of millwork and patterned lumber prices would constitute a violation of Section 1, Title 15, U.S.C.A.;

(o) What divers means and methods these defendants, or any of them, have used as alleged in paragraph 28, page 18, part VI;

(p) What activities defendant Unions agreed to engage in and have engaged in so as to prevent the sale and shipment of millwork and patterned lumber into the San Francisco Bay Area by manufacturers located outside the State of California, as [36] alleged in paragraph 27, sub-paragraph (a), page 19, part VI;

(q) How and in what manner the agreement referred to in paragraph 27, sub-paragraph (b), page 19, part VI affects interstate commerce or manufacturers outside of the State of California, other than incidentally with all other commerce and manufacturers;

(r) What subsequent agreements and understandings have been made, the dates thereof, and whether oral or in writing, as referred to in paragraph 28, sub-paragraph (c), page 19, part VI;

(s) How information about shipments from states other than California would have any bearing on enforcement of the provisions of any contract, as alleged in paragraph 28, sub-paragraph (f), page 20, part VI;

(t) How and in what manner defendants prevented the sale and delivery of a car load of millwork and patterned lumber, as alleged in paragraph 28, sub-paragraph (h), page 20, part VI, and whether such prevention, if any, was for a lawful purpose;

(u) How and in what manner these defendants, or any of them, prevented the sale and delivery of car loads of millwork and patterned lumber in the San Francisco Bay Area which had been shipped in interstate commerce; what car loads were so prevented from being sold and shipped, the dates of such shipments, and the names of the shippers, as referred to in paragraph 28, sub-paragraph (h), page 21, part VI;

(v) Whether the use of pickets and threats to

picket, as referred to in paragraph 28, sub-paragraph 1, page 21, part VI, was for a lawful purpose;

(w) What other purchasers of millwork and patterned lumber have been forced to cancel orders from manufacturers outside of the State of California, as alleged in paragraph 28, [37] sub-paragraph (i), page 21, part VI;

(x) The occasions, including the times and places, that railroad freight cars bearing millwork and patterned lumber in transit from other states to the San Francisco Bay Area, were prevented from being unloaded by means of pickets and threats to picket, as alleged in paragraph 28, sub-paragraph (j), page 21, part VI; and whether such picketing or threats to picket was for a lawful purpose and a legitimate object of labor;

(y) How and in what manner the raising, maintaining and stabilizing of the price of millwork and patterned lumber in the San Francisco Bay Area unreasonably affects interstate commerce;

(z) What agreement is referred to in paragraph 28, page 22, part VI;

aa) How it appears, other than by the conclusion of the pleader, that any act done by these defendants, or any of them, related to other than a legitimate objective of labor;

(bb) What manufacturers were conspired against from engaging in interstate commerce;

(cc) Now and in what manner these defendants, or any of them, were engaged or interested in the

maintenance of arbitrary, artificial or non-competitive prices;

(dd) Whether intrastate shipments were likewise affected and the volume of interstate shipments in any way decreased by any of the acts or things referred to in paragraph 30, page 23, part VII.

XIV.

That the said second count contained in said indictment is indefinite, uncertain, ambiguous and unintelligible, and in this behalf these defendants and each of them specify

(a) That said second count is indefinite, uncertain, ambiguous and unintelligible in the same particulars as the first [38] count as to all matters therein incorporated by reference to paragraphs 1 to 25, 28 and 29, of the first count, and these defendants refer to the specifications of the demurrer as to said paragraphs of the first count, and incorporate them herein to the same extent and effect as though repeated at length;

(b) That it does not appear how these defendants could monopolize the business of selling and distributing millwork and patterned lumber when not engaged in such business;

(c) That it does not appear how these defendants could prevent, eliminate and suppress all competition in the manufacture and sale of millwork and patterned lumber from manufacturers and dealers outside of the San Francisco Bay Area and the State of California, when their alleged

agreement only affected manufacturers not maintaining certain standards of wages and labor conditions;

(d) That it does not appear what contracts were made, as alleged in paragraph 35, sub-paragraph (a), page 25, part IX;

(e) That it does not appear from whom defendant Unions have from time to time demanded that purchases be made only from manufacturers acceptable to said Unions;

(f) That it does not appear what agreements and demands were enforced by picketing or threatened picketing, and what other means of intimidation or coercion were used, as set forth in paragraph 35, sub-paragraph (c), page 25, part IX.

Wherefore, these demurring defendants separately pray that this demurrer to said indictment, and each count separately, be sustained and that said indictment as to each of them be dismissed and that each defendant be forthwith discharged.

JOSEPH O. CARSON, JR.

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for said Defendants.

[Endorsed]: Filed Oct. 1, 1940. [39]

[Title of District Court and Cause.]

DEMURRER OF THE DEFENDANTS LUMBER PRODUCTS ASSOCIATION, INC., AND OTHER DEFENDANTS TO THE INDICTMENT.

Defendants, Lumber Products Association, Inc., a corporation, and the defendants Acme Manufacturing Co., Inc., a corporation, J. A. Hart Mill & Lumber Co., Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, Liberty Mill & Cabinet Shop, a partnership, Eureka [40] Sash, Door & Molding Mills, a corporation, W. P. Holmes Mill & Cabinet Shop, Carl Warden, Harry W. Gaetjen, Charles Monson and Fred Spencer, severally, but not jointly, demur to the indictment and to each of the counts therein on the following grounds:

I.

The indictment does not state facts sufficient to constitute any offense by defendants J. A. Hartants, or by any of them, against the United States.

II.

The indictment does not state facts sufficient to constitute any offense by defendants J. A. Hart Mill & Lumber Co., Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, Liberty Mill & Cabinet Shop, a partnership, and W. P. Holmes Mill & Cabinet Shop, or any of them against the United States.

III.

Count One of the indictment does not state facts sufficient to constitute any offense by these demurring defendants, or by any of them, against the United States.

IV.

Count One of the indictment does not state facts sufficient to constitute any offense by defendants Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, and Liberty Mill & Cabinet Shop, a partnership.

V.

Count One of the indictment does not state facts sufficient to constitute any offense by these demurring defendants, or by any of them, under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act. [41]

VI.

Count One of the indictment does not state facts sufficient to constitute any offense by the defendants, Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, and Liberty Mill & Cabinet Shop, a partnership, or by any of them, under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

VII.

Count Two of the indictment does not state facts sufficient to constitute any offense by these de-

murring defendants, or by any of them, under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

VIII.

Count Two of the indictment does not state facts sufficient to constitute any offense by the defendants Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, and Liberty Mill & Cabinet Shop, a partnership, or by any of them, under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

IX.

Count One of the indictment is duplicitous in that it charges or purports to charge more than one separate and distinct offense against the United States, namely:

(a) A combination and conspiracy to exclude manufacturers of millwork and patterned lumber located in states other than California from selling millwork and patterned lumber in the San Francisco Bay area and from shipping such millwork and patterned lumber in interstate trade and commerce [42] into the San Francisco Bay area.

(b) A combination and conspiracy to curtail, restrict and prevent lumber yards and jobbers in the San Francisco Bay area from purchasing and shipping or causing to be shipped in interstate commerce in the San Francisco Bay area millwork and patterned lumber manufactured in states other than California.

(c) A combination and conspiracy to raise, fix, stabilize and maintain prices for millwork and patterned lumber shipped in interstate commerce into the State of California for sale in the San Francisco Bay area.

X.

Count One of the indictment is defective for repugnancy in that it charges or purports to charge in one and the same count that the defendants combined and conspired to exclude from the San Francisco Bay area and from sale therein millwork and patterned lumber manufactured in states outside of the State of California and also that they combined and conspired to raise, fix, maintain and stabilize prices in the San Francisco Bay area of millwork and patterned lumber, manufactured in states outside of California, these charges being inconsistent and repugnant since the second supposes and requires the continued importation of out-of-state millwork and lumber, and, not its exclusion.

XI.

Count Two of the indictment is duplicitous in that it charges or purports to charge more than one separate and distinct offense against the United States, namely:

(a) A combination and conspiracy to monopolize part of the interstate trade and commerce among the several states [43] in the sale of millwork and patterned lumber in the San Francisco Bay area.

(b) A combination and conspiracy to attempt to monopolize part of the interstate trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area.

(c) An attempt to monopolize part of the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area.

(d) A combination and conspiracy in restraint of trade and commerce in millwork and patterned lumber among the several states of the United States.

(e) A combination and conspiracy to exclude manufacturers of millwork and patterned lumber located in states other than California from selling millwork and patterned lumber in the San Francisco Bay area and from shipping such millwork and patterned lumber in interstate trade and commerce into the San Francisco Bay area.

(f) A combination and conspiracy to curtail, restrict and prevent lumber yards and jobbers in the San Francisco Bay area from purchasing and shipping or causing to be shipped in interstate commerce in the San Francisco Bay area millwork and patterned lumber manufactured in states other than California.

(g) A combination and conspiracy to raise, fix, stabilize and maintain prices for millwork and patterned lumber shipped in interstate commerce into the State of California for sale in the San Francisco Bay area.

(h) A combination and conspiracy to monopolize the business of selling and distributing millwork and patterned lumber shipped in interstate commerce into the San Francisco [44] Bay area.

(i) A combination and conspiracy to prevent, eliminate and suppress all competition in the manufacture and sale of millwork and patterned lumber from manufacturers and dealers outside of the San Francisco Bay area.

(j) A combination and conspiracy to establish and maintain uniform, monopolistic and non-competitive prices for the sale of millwork and patterned lumber shipped in interstate trade into the San Francisco Bay area.

(k) A combination and conspiracy to eliminate and prevent all millwork and patterned lumber manufacturers and dealers other than those having their principal place of business and mill in the San Francisco Bay area from engaging in the sale and distribution of millwork and patterned lumber in said area.

XII.

Count Two of the indictment is defective for repugnancy in that it charges or purports to charge in one and the same count, on the one hand, that the defendants combined and conspired with the object of monopolizing the business of selling millwork and patterned lumber in the Bay area shipped in interstate commerce and of establishing and maintaining uniform, monopolistic and non-competitive prices for the sale of millwork and patterned

lumber shipped in interstate commerce into the San Francisco Bay area, which said objects presuppose and require the continuance of the importation in interstate commerce of millwork and patterned lumber into the San Francisco Bay area; while, on the other hand, it also charges that the defendants combined and conspired with the object of excluding from the San Francisco Bay area all millwork and patterned lumber produced [45] outside of the State of California, which said object presupposes and requires the termination of interstate commerce in the San Francisco Bay area of millwork and patterned lumber produced outside of the State of California.

XIII.

Count One of the indictment is vague, indefinite and uncertain to such an extent that these defendants are not advised of the nature of the charges against them so that they, or any of them, may properly prepare and submit defenses thereto, and no facts are stated sufficient to notify these defendants, or any of them, of the nature of the accusations for which they and each of them are now sought to be placed on trial, as required by the Sixth Amendment to the Constitution of the United States.

XIV.

Count One of the indictment is vague, indefinite and uncertain as aforesaid in this, that it is not stated therein nor can it be ascertained therefrom:

1. How the defendant Lumber Products Asso-

ciation, Inc., not having been incorporated until November, 1938, as alleged in paragraph 7 of the indictment, could have

(a) Entered into or been a party to any agreement with the defendant unions or other defendants in the year 1936, as alleged in paragraph 28, subdivision (a) of the indictment;

(b) Pursuant to any understanding set out in said paragraph 28, subdivision (a) of the indictment, entered into a contract and agreement on September 21, 1936, as alleged in said paragraph 28, subdivision (b) of the indictment; or

(c) Have continued in full force and effect by subsequent [46] agreements and understandings an agreement to which it was not a party, as alleged in paragraph 28, subdivision (c) of the indictment; or

(d) In June, 1937, prevented the sale and delivery of a carload of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from the Ewauna Box Company, as alleged in paragraph 28, subdivision (h) of the indictment; or

(e) In June, 1938, forced the Jones Hardwood Company of San Francisco to cancel a certain order for millwork and patterned lumber as alleged in paragraph 28, subdivision (i) of the indictment; or

(f) In January, 1938, prevented the unloading of railroad freight cars bearing millwork and patterned lumber in interstate commerce from states

other than California to the San Francisco Bay area, as alleged in paragraph 28, subdivision (j) of the indictment.

2. How, or in what manner, the defendants in June, 1937, prevented the sale and delivery of a carload of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from the Ewauna Box Company of Klamath Falls, Oregon, to Chris M. Winniger for sale in the San Francisco Bay area, or on other dates prevented the sale and delivery of carloads of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from states other than California for sale in the San Francisco Bay area, all as alleged in paragraph 28, subdivision (h) of the indictment.

3. How, or in what manner, the defendants have, at various dates to the Grand Jurors unknown, forced other pur- [47] chasers of millwork and patterned lumber to cancel orders for millwork and patterned lumber from manufacturers located in states other than California, all as alleged in paragraph 28, subdivision (i) of the indictment.

XV.

Count Two of the indictment is vague, indefinite and uncertain to such an extent that these defendants are not advised of the nature of the charges against them so that they, or any of them, may properly prepare and submit defenses thereto, and no facts are stated sufficient to notify these defend-

ants, or any of them, of the nature of the accusations for which they and each of them are now sought to be placed on trial, as required by the Sixth Amendment to the Constitution of the United States.

XVI.

Count Two of the indictment is vague, indefinite and uncertain, as aforesaid, in this, that it is not stated therein nor can it be ascertained therefrom:

1. Whether the defendants had or have any power to monopolize the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area in the State of California.

2. Whether the defendants had or have any intent to monopolize the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area in the State of California.

3. Whether all or any substantial proportion of the mills, sawmills, or cabinet shops in states other than California manufacturing millwork and patterned lumber fail or failed to conform to the rates of wages and working conditions [48] of the collective bargaining agreements between the defendant unions and the defendant manufacturers.

4. Whether the defendants knew, supposed or believed that all or any substantial proportion of the mills, sawmills, and cabinet shops in states other than California manufacturing millwork and patterned lumber fail or failed to conform to the

rates of wages and working conditions of the collective bargaining agreements between the defendant unions and the defendant manufacturers.

Wherefore, these defendants severally pray that this demurrer be sustained and the indictment be dismissed and that these defendants and each of them be hence dismissed by the Court.

J. M. THOMAS

BROBECK, PHLEGER &

HARRISON

Attorneys for defendants

Lumber Products Association,
Inc., et al.

[Endorsed]: Filed Oct. 1, 1940. [49]

[Title of District Court and Cause.]

**PLEA IN ABATEMENT BY DEFENDANT
DAVE RYAN**

Comes now the defendant Dave Ryan, and in addition to the plea in abatement filed herein as a member of The Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America, files this further, separate Individual plea, and without waiving his right hereafter to plead not guilty, says that the United States ought not further to prosecute the said indictment against him and is barred therefrom for the following reasons, to wit:

That the evidence upon which this indictment was found by the Grand Jury was obtained in direct violation and contravention of the Constitutional right of this defendant under Amendment 5 of the United States Constitution, not to be compelled to be a [50] witness against himself in a criminal action or proceeding and further that by reason of being compelled to testify concerning the transactions, matters and things upon which the indictment was found, he is entitled to immunity from prosecution on the charges contained in said indictment, which prosecution is barred under the provisions of Section 32, 15 U.S.C.A.

Specifically, this defendant alleges that on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to said The Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America, and to this defendant as secretary thereof, and said subpoena was served upon your affiant as secretary of said local Union; that pursuant to said subpoena your affiant appeared on April 24, 1940, before the Grand Jury which found and presented said indictment; that then and there this defendant refused to testify pursuant to said subpoena unless granted immunity, which was refused him, and this defendant asserted his existing constitutional guarantees and rights under Amendments IV and V of the Constitution of the United States, including the right of a person not to be compelled to be a witness against himself in a criminal proceeding and

against self-incrimination, which rights and guarantees were asserted, both as an individual and as a member of the said The Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America; that notwithstanding the refusal of this defendant to testify for the reasons aforesaid, the above entitled Court, of which the aforesaid grand jury was a part, ordered, required and compelled this defendant to comply with said subpoena and give testimony pursuant thereto, and concerning the transactions, matters and things upon which said indictment was found; that under such compulsion and not otherwise, and over the continued protest of this defendant, he was required to and did give testi- [51] mony and evidence concerning the transactions, matters and things upon which the said indictment was found, and among others, the following:

That he was interrogated and testified before said grand jury concerning the organization of the United Brotherhood of Carpenters and Joiners of America and all local unions chartered under said Brotherhood, how such organizations were established, set up and functioned; that he was further interrogated and testified concerning the identity of the officers of the Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America; that he was further interrogated and testified concerning his signature appended to the agreement of September, 1936, and described in the indictment herein; that he was further interrogated

and testified concerning the existence of communications relating to the matters and things specified in said subpoena duces tecum;

That the evidence required to be given by this defendant went beyond the scope of producing and identifying books, records and documents, and related both directly and indirectly to transactions, matters and things contained in said indictment; that this indictment has been found against him illegally; that he is immune from prosecution upon the charges contained in said indictment and that as to this defendant said indictment is barred and is null and void and should be abated.

Wherefore, this defendant prays judgment whether he shall be called further to answer said indictment and prays that said indictment be quashed or that he be dismissed therefrom.

DAVE RYAN [52]

(Duly Verified.)

[Endorsed]: Filed Oct. 1, 1940. [53]

[Title of District Court and Cause.]

PLEA IN ABATEMENT BY DEFENDANT
CHARLES HELBING

Comes now the defendant Charles Helbing and in addition to the plea in abatement filed herein as a member of the United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42,

files this further, separate individual plea, and without waiving his right hereafter to plead not guilty, says that the United States ought not further to prosecute the said indictment against him and is barred therefrom for the following reasons, to wit:

That the evidence upon which this indictment was found by the Grand Jury was obtained in direct violation and contravention of the Constitutional right of this defendant under Amendment 5 of the United States Constitution not to be compelled to be a [54] witness against himself in a criminal action or proceeding and further that by reason of being compelled to testify concerning the transactions, matters and things upon which the indictment was found, he is entitled to immunity from prosecution on the charges contained in said indictment, which prosecution is barred under the provisions of Section 32, 15 U.S.C.A.

Specifically, this defendant alleges that on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, and said subpoena was served upon your affiant as business agent of said local Union; that pursuant to said subpoena your affiant appeared on May 13, 1940, before the Grand Jury which found and presented said indictment; that then and there this defendant refused to testify pursuant to said subpoena unless granted immunity, which was refused him, and this defendant asserted his existing constitutional guarantees and

rights under Amendments IV and V of the Constitution of the United States, including the right of a person not to be compelled to be a witness against himself in a criminal proceeding and against self-incrimination, which rights and guarantees were asserted, both as an individual and as a member of said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42; that notwithstanding the refusal of this defendant to testify for the reasons aforesaid, the above entitled Court of which the aforesaid grand jury was a part, ordered, required and compelled this defendant to comply with said subpoena and give testimony pursuant thereto, and concerning the transactions, matters and things upon which said indictment was found; that under such compulsion and not otherwise, and over the continued protest of this defendant, he was required to and did give testimony and evidence concerning the transactions, matters and things upon which the said indictment was found, and among [55] others, the following:

That he was interrogated and testified before said grand jury relative to certain statements attributed to him in the minutes of a meeting during the year 1938, of said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, and was questioned and testified concerning the meaning of such statements and the use of the word "pledge" in connection with the agreement or agreements between such union and the defendant manufacturers in the above entitled proceeding and referred to in said indictment;

That this defendant was further interrogated and gave testimony concerning the taking of certain so-called "booster cards" to Jones Brothers, which cards fostered the use of local millwork as opposed to millwork manufactured outside of the San Francisco Bay area;

That this defendant was further interrogated and testified concerning his acts and conduct in connection with blocking the use of material in the San Francisco Bay area that did not carry a union label, and he was further required to give evidence concerning the union organization of millwork manufacturers in the states of Washington and Oregon;

That the evidence required to be given by this defendant went beyond the scope of producing and identifying books, records and documents, and related both directly and indirectly to transactions, matters and things contained in said indictment; that this indictment has been found against him illegally; that he is immune from prosecution upon the charges contained in said indictment and that as to this defendant said indictment is barred and is null and void and should be abated.

Wherefore, this defendant prays judgment whether he shall be called further to answer said indictment and prays that said [56] indictment be quashed or that he be dismissed therefrom.

CHARLES HELBING [57]

(Duly Verified.)

[Endorsed]: Filed Oct. 1, 1940. [58]

[Title of District Court and Cause.]

**PLEA IN ABATEMENT BY DEFENDANT
WALTER O'LEARY**

Comes now the defendant Walter O'Leary, and in addition to the plea in abatement filed herein as a member of the United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, files this further, separate individual plea, and without waiving his right hereafter to plead not guilty, says that the United States ought not further to prosecute the said indictment against him and is barred therefrom for the following reasons, to wit:

That the evidence upon which this indictment was found by the Grand Jury was obtained in direct violation and contravention of the Constitutional right of this defendant under Amendment 5 of the United States Constitution not to be compelled to be a [59] witness against himself in a criminal action or proceeding and further that by reason of being compelled to testify concerning the transactions, matters and things upon which the indictment was found, he is entitled to immunity from prosecution on the charges contained in said indictment, which prosecution is barred under the provisions of Section 32, 15 U.S.C.A.

Specifically, this defendant alleges that on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, and said subpoena was served upon your affiant as business agent

of said local Union; that pursuant to said subpoena your affiant appeared on May 13, 1940, before the Grand Jury which found and presented said indictment; that then and there this defendant refused to testify pursuant to said subpoena unless granted immunity, which was refused him, and this defendant asserted his existing constitutional guarantees and rights under Amendments IV and V of the Constitution of the United States, including the right of a person not to be compelled to be a witness against himself in a criminal proceeding and against self-incrimination, which rights and guarantees were asserted, both as an individual and as a member of the said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550; that notwithstanding the refusal of this defendant to testify for the reasons aforesaid, the above entitled Court, of which the aforesaid grand jury was a part, ordered, required and compelled this defendant to comply with said subpoena and give testimony pursuant thereto, and concerning the transactions, matters and things upon which said indictment was found; that under such compulsion and not otherwise, and over the continued protest of this defendant, he was required to and did give testimony and evidence concerning the transactions, matters and things upon which the said indictment was found, and among [60] others, the following:

That he was interrogated and testified before said grand jury concerning the sending back to Los Angeles of certain ironing boards shipped from Los Angeles to the San Francisco Bay area and relative to

the reasons for the return of said ironing boards; that this defendant was further interrogated and gave testimony concerning activities in the San Francisco Bay area in keeping out millwork manufactured under a lesser wage scale than that existing in the San Francisco Bay area; that this defendant was further interrogated and testified concerning the refusal to use or install products not bearing the union label and he was further interrogated and testified concerning his present attitude as to the propriety of keeping out of the San Francisco Bay area products without the union label or manufactured under a lesser wage scale than that prevailing in the San Francisco Bay area;

That the evidence required to be given by this defendant went beyond the scope of producing and identifying books, records and documents, and related both directly and indirectly to transactions, matters and things contained in said indictment; that this indictment has been found against him illegally; that he is immune from prosecution upon the charges contained in said indictment and that as to this defendant said indictment is barred and is null and void and should be abated.

Wherefore, this defendant prays judgment whether he shall be called further to answer said indictment and prays that said indictment be quashed or that he be dismissed therefrom.

WALTER O'LEARY. [61]

(Duly Verified.)

[Endorsed]: Filed Oct. 1, 1940. [62].

[Title of District Court and Cause.]

PLEA IN ABATEMENT BY CERTAIN
DEFENDANTS.

Come now the defendants The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, and the individual defendants Dave Ryan, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, H. Lidley, W. L. Wilcox, Walter O'Leary, M. D. Cicinato, J. P. Sholden, C. H. Irish, Otto W. Sammet and Emil H. Ovenberg, and without waiving their rights, or the right of any of them hereafter to plead not guilty, separately and severally, say that the United States ought not further to prosecute the indictment herein against them, for the following [63] reasons, to wit:

I.

The evidence upon which this indictment was found by the Grand Jury against these certain defendants was obtained by an unlawful search and seizure of their persons, property and effects, in direct violation and contravention of Amendment IV of the United States Constitution.

Specifically, subpoenas duces tecum, returnable before the Grand Jury, were issued out of and under the Seal of this Court directed to Millmen's Union No. 550 and Millmen's Union No. 42, both of the

United Brotherhood of Carpenters and Joiners of America, and to Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, calling, among other things, for the production before the Grand Jury of the records and documents of the said organizations. Inasmuch as the said organizations were and are unincorporated voluntary associations of individuals for trade union purposes, their respective records and documents were and are private papers, property and effects of the said trade unions and of the various individual members thereof, including the individual defendants presenting this plea, each of whom is, and at all times herein mentioned was, a member of at least one of the unincorporated voluntary associations presenting this plea. On the return of the aforesaid subpoenas duces tecum, the said Millmen's Union No. 550 and Millmen's Union No. 42 and Bay Counties District Council of Carpenters, on behalf of themselves and all their members respectively, including the individual defendants presenting this plea, protested, claimed and asserted that the compulsory production of said records and documents was a violation of their constitutional rights under Amendment IV of the United States Constitution and that the said records and documents were the private papers, property and effects of the [64] said three trade unions and of the members thereof including the individual defendants presenting this plea; and the said three trade unions on behalf of themselves and all their

members, including the individual defendants presenting this plea, thereupon declined, because of such claimed violation of their constitutional rights, to produce said records and documents before the Grand Jury unless they were given immunity in accordance with the statute in such case made and provided. Extension of such immunity was refused; and the Court of which the aforesaid Grand Jury was a part thereupon ordered, required and compelled compliance with the said subpoenas duces tecum; and thereupon, over protest by the said three trade unions on behalf of themselves and their respective members, including the individual defendants presenting this plea, yielded up said records and documents to the Grand Jury which seized and took possession thereof and used the same as evidence against the defendants presenting this plea and against the said three trade unions and considered and employed said records and documents in support of the aforesaid indictment and in and for the finding thereof. No search warrant was ever issued calling for the production or seizure of the said records and documents; and the same were seized and taken from the possession of the said three trade unions and these certain defendants presenting this plea and used as aforesaid, without their consent and in violation of their protests and rights.

In consequence, the defendants presenting this plea respectfully submit that this indictment has been found against them and each of them illegally.

and that the same is null and void and should be abated.

II.

The evidence upon which this indictment was found by the Grand Jury was obtained in direct violation and contravention [65] of the constitutional right of these defendants under Amendment V of the United States Constitution not to be compelled to be witnesses against themselves in a criminal action or proceeding.

Specifically, subpoenas duces tecum, returnable before the Grand Jury, were issued out of and under the Seal of this Court directed to Millmen's Union No. 550 and Millmen's Union No. 42, both of the United Brotherhood of Carpenters and Joiners of America, and to Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, calling, among other things for the production before the Grand Jury of the records and documents of the said organizations. Inasmuch as the said organizations were and are unincorporated voluntary associations of individuals for trade union purposes, their respective records and documents were and are private papers, property and effects of the said trade unions and of the various individual members thereof, including the individual defendants presenting this plea, each of whom is, and at all times herein mentioned was, a member of at least one of the unincorporated voluntary associations presenting this plea. On the return of the aforesaid subpoenas duces tecum, the said Millmen's Union No. 550 and

Millmen's Union No. 42 and Bay Counties District Council of Carpenters, on behalf of themselves and all their members respectively, including the individual defendants presenting this plea, protested, claimed and asserted that the compulsory production of said records and documents was a violation of their constitutional rights under Amendment V of the United States Constitution and an unlawful means of compelling them to give evidence against themselves, and that the said records and documents were the private papers, property and effects of the said three trade unions and of the members thereof including the individual defendants presenting this plea; and the said three trade unions on behalf of themselves and all their members, [66] including the individual defendants presenting this plea, thereupon declined, because of such claimed violation of their constitutional rights, to produce said records and documents before the Grand Jury unless they were given immunity in accordance with the statute in such case made and provided. Extension of such immunity was refused; and the Court, of which the aforesaid Grand Jury was a part, thereupon ordered, required and compelled compliance with the said subpoenas duces tecum; and thereupon, over protest by the said three trade unions on behalf of themselves and their respective members, including the individual defendants presenting this plea, yielded up said records and documents to the Grand Jury which seized and took possession thereof and used the same as evidence against the defendants presenting this plea and against the said three trade

unions and considered and employed said records and documents in support of the aforesaid indictment and the finding thereof. No search warrant was ever issued calling for the production or seizure of the said records and documents; and the same were seized and taken from the possession of the said three trade unions and these certain defendants presenting this plea without their consent and in violation of their protests and rights.

In consequence, the defendants presenting this plea respectfully submit that they have been compelled illegally to give evidence against themselves; that this indictment has been found against them illegally; and that the same is null and void and should be abated.

Wherefore, these certain defendants pray judgment whether they shall be called further to answer said indictment and pray that the said indictment be quashed.

**THE BAY COUNTIES DISTRICT
COUNCIL OF [67] CARPEN-
TERS OF THE UNITED
BROTHERHOOD OF CARPEN-
TERS AND JOINERS OF AMER-
ICA**

By DAVE RYAN

Secretary.

**THE UNITED BROTHERHOOD
OF CARPENTERS AND JOIN-
ERS OF AMERICA MILLMEN'S
UNION No. 42**

By D. J. EDWARDS

Vice-President.

**THE UNITED BROTHERHOOD
OF CARPENTERS AND JOIN-
ERS OF AMERICA MILLMEN'S
UNION No. 550**

By WALTER O'LEARY

Business Representative.

DAVE RYAN

WALTER O'LEARY

CHARLES ROE

D. J. EDWARDS.

CHARLES HELBING

W. P. KELLY

W. L. WILCOX

H. LIDLEY

M. D. CICINATO

J. P. SHOLDEN

C. H. IRISH

EMIL H. OVENBERG

OTTO W. SAMMET [68]

(Duly Verified.) [69]

[Endorsed]: Filed Oct. 1, 1940. [81]

**District Court of the United States
Northern District of California
Southern Division**

**At a Stated Term of the Southern Division of the
United States District Court for the Northern Dis-
trict of California, held at the Court Room thereof,**

in the City and County of San Francisco, on Tuesday, the 1st day of October, in the year of our Lord one thousand nine hundred and forty.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

This case came on regularly this day for entry of plea of defendants * * * ; also for entry of plea of defendant Lumber Products Association, et al.

Morris Clark, Esq., Special Assistant to the Attorney General, was present for and on behalf of the United States. Harold C. Faulkner, Esq., Charles de Y. Elkus, Jr., Esq., Maurice R. Carey, Esq., Mathew O. Tobriner, Esq., Hugh K. McKevitt, Esq., Jack M. Howard, Esq., J. M. Thomas, Esq., Maurice E. Harrison, Esq., Morgan J. Doyle, Esq., and James O'Brien, Esq., appeared as Attorney for the various defendants. [82]

* * * * *

Mr. Carey filed the Demurrer of the defendants Smith Lumber Co. and Reginald Smith. * * * Mr. Harrison filed a motion to quash Indictment as to the defendants Warden Brothers, * * *, * * *, and the Demurrer of the defendants Lumber Products Association, Acme Manufacturing Co., J. A. Hart Mill & Lumber Co., Warden Brothers, * * *, * * *, Eureka Sash, Door & Moulding Mills, W. P. Holmes Mill & Cabinet Shop, Carl Warden, Harry W. Gaetjen, Charles Monson and Fred Spencer.

* * * * *

Mr. McKevitt filed a Demurrer and a Demand for a Bill of Particulars on behalf of the defendants The United Brotherhood of Carpenters and Joiners of America, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42; The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, * * *, The Alameda County Building and Construction Trades Council, J. F. Cambiano, Dave Ryan, * * *, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, * * *, W. L. Wilcox, Walter O'Leary, * * *, * * *, C. H. Irish, * * *, * * *, Emil H. Ovenberg.

* * * * *

Mr. McKevitt filed pleas in abatement on behalf of the defendants Dave Ryan, Walter O'Leary, Charles Helbing, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, [83] The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, and Dave Ryan, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, * * *, W. L. Wilcox, Walter O'Leary, * * *, * * *, C. H. Irish, * * *, and Emil H. Ovenberg. After hearing Mr. Clark and the Attorneys for the various defendants, It Is Ordered that the Clerk of this Court file the various pleas in abatement and that

they then be placed on the Secret File of this Court.

The following defendants who were present with their Attorney Morgan J. Doyle, Esq., thereupon plead "Not Guilty" to the charges contained in the Indictment, to-wit: Robert W. Shannon, Nels E. Nelson, Boorman Lumber Co., by George Clayberg, Manager, Eureka Mill & Lumber Co., by Clarence I. Gilbert, Hayward Mill & Lumber Co., by Nels C. Nelson, Owner, * * *, Hogan Lumber Co., by Thomas P. Hogan, Jr., President, E. K. Wood Lumber Company, by John B. Wood, President, Wood Products, Inc., by David N. Edward, Director, Zenith Mill & Lumber Company, by Roy N. Driesbach, Vice-President, Loop Lumber & Mill Company, by William Chatman, President, San Leandro Mill & Lumber Co., by R. W. Shannon, Owner, San Pablo Lumber Co., by A. C. Nelson, Partner, Tilden Lumber Co., by Victor J. Herrman, President.

After hearing the various Attorneys, it is ordered that the hearing on the various Demurrers and Motions be continued to October 21, 1940.

Further ordered that the United States have to October 7, 1940, to file Brief and that the defendants have one week thereafter to file reply Briefs, and that the United States [84] have five days thereafter to file reply Briefs.

Further ordered that the arraignment of the defendants Driesbach, et al, and the plea of the other defendants be continued to October 21, 1940. [85]

[Title of District Court and Cause.]

**DEMURRER TO PLEA IN ABATEMENT OF
DEFENDANT WALTER O'LEARY [86]**

Now comes the United States of America, by Frank J. Hennessy, United States Attorney, Tom C. Clark, Morris R. Clark, Charles C. Pearce, Charles S. Burdell, and Laurence P. Sherfy, Special Assistants to the Attorney General, and demurs to the plea in abatement herein of defendant Walter O'Leary, on the ground that the facts stated therein, or any of them, do not entitle said defendant to immunity under the Act of February 25, 1903, c. 755 § 1, 32 Stat. 904 (c. 15, sec. 32 of the United States Code), or under any other immunity statute of the United States.

Respectfully,

FRANK J. HENNESSY
United States Attorney

TOM C. CLARK

MORRIS R. CLARK

CHARLES C. PEARCE

CHARLES S. BURDELL

LAURENCE P. SHERFY

Special Assistants to the Attorney General,
Attorneys for the United States of America.

CERTIFICATE

I certify that, in my opinion, the within Demurrer is good in law and is not taken for purposes of delay.

MORRIS R. CLARK

Special Assistant to the Attorney General. [87]

[Verification.]

[Endorsed]: Filed Oct. 14, 1940. [88]

[Title of District Court and Cause.]

DEMURRER TO PLEA IN ABATEMENT ENTITLED "PLEA IN ABATEMENT BY CERTAIN DEFENDANTS" [89]

Now comes the United States of America, by Frank J. Hennessy, United States Attorney, Tom C. Clark, Morris R. Clark, Charles C. Pearce, Charles S. Burdell, and Laurence P. Sherfy, Special Assistants to the Attorney General, and demurs to the plea herein entitled "Plea in Abatement by Certain Defendants," on the ground that the facts stated therein, or any of them, do not entitle the defendants named therein, or any of them, to immunity under the Act of February 25, 1903, c. 755, § 1, 32 Stat. 904 (c. 15, sec. 32 of the United States Code), or under any other immunity statute of the United States.

Respectfully,

FRANK J. HENNESSY

United States Attorney

TOM C. CLARK

MORRIS R. CLARK

CHARLES C. PEARCE

CHARLES S. BURDELL

LAURENCE P. SHERFY

Special Assistants to the Attorney General,
Attorneys for the United States of America.

CERTIFICATE

I certify that, in my opinion, the within Demurrer is good in law and is not taken for purposes of delay.

MORRIS R. CLARK

Special Assistant to the Attorney General. [90]

[Verification.]

[Endorsed]: Filed Oct. 14, 1940. [91]

[Title of District Court and Cause.]

DEMURRER TO PLEA IN ABATEMENT OF
DEFENDANT CHARLES HELBING [92]

Now comes the United States of America, by Frank J. Hennessy, United States Attorney, Tom C. Clark, Morris R. Clark, Charles C. Pearce, Charles S. Burdell, and Laurence P. Sherfy, Special Assistants to the Attorney General, and demurs to the plea in abatement herein of defendant Charles Helbing, on the ground that the facts stated therein, or any of them, do not entitle said defendant to immunity under the Act of February 25, 1903, c. 755

§ 1, 32 Stat. 904 (c. 15, sec. 32 of the United States Code), or under any other immunity statute of the United States.

Respectfully,

FRANK J. HENNESSY

United States Attorney

TOM C. CLARK

MORRIS R. CLARK

CHARLES C. PEARCE

CHARLES S. BURDELL

LAURENCE P. SHERFY

Special Assistants to the Attorney General,
Attorneys for the United States of America.

CERTIFICATE

I certify that, in my opinion, the within Demurrer is good in law and is not taken for purposes of delay.

MORRIS R. CLARK

Special Assistant to the Attorney General. [93]

[Verification.]

[Endorsed]: Filed Oct. 14, 1940. [94]

[Title of District Court and Cause.]

**DEMURRER TO PLEA IN ABATEMENT OF
DEFENDANT RYAN [95]**

Now comes the United States of America, by
Frank J. Hennessy, United States Attorney, Tom

C. Clark, Morris R. Clark, Charles C. Pearce, Charles S. Burdell, and Laurence P. Sherfy, Special Assistants to the Attorney General, and demurs to the plea in abatement herein of defendant Dave Ryan, on the ground that the facts stated therein, or any of them, do not entitle said defendant to immunity under the Act of February 25, 1903, c. 755, § 1, 32 Stat. 904 (c. 15, sec. 32 of the United States Code), or under any other immunity statute of the United States.

Respectfully,

FRANK J. HENNESSY

United States Attorney

TOM C. CLARK

MORRIS R. CLARK

CHARLES C. PEARCE

CHARLES S. BURDELL

LAURENCE P. SHERFY

Special Assistants to the Attorney General,
Attorneys for the United States of America.

CERTIFICATE

I certify that, in my opinion, the within Demurrer is good in law and is not taken for purposes of delay.

MORRIS R. CLARK

Special Assistant to the Attorney General. [96]

[Verification.]

[Endorsed]: Filed Oct. 14, 1940. [97]

[Title of District Court and Cause.]

**ORDER SUSTAINING DEMURRERS TO
PLEAS IN ABATEMENT AND DENYING
PLEAS IN ABATEMENT, DENYING DE-
MANDS AND MOTIONS FOR BILLS OF
PARTICULARS AND OVERRULING DE-
MURRERS.**

Ordered:

1. That the motions of Warden Brothers (a partnership described in the indictment as composed of Anna K. Warden and Carl A. Warden, copartners), Brannan Street Planing Mill (a partnership described in the indictment as composed of Albert B. Veyhle and Charles Gustafson, copartners), Sage & Wilder (a partnership described in the indictment as composed of Jesse L. Sage and Christian A. Wilder), and Liberty Mill & Cabinet Shop (a movant described in the motion papers as a partnership) to quash the indictment be and each of them is hereby Denied;

2. That the motions of Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder, and Charles [98] Gustafson, to quash bench warrants, to vacate order for issuance thereof, and to discharge bail, be and each of them is hereby Denied;

3. That the motions of George Randolph, Herman Sichel, Ella Bateman, Jessie Bateman, and Phyliss Dennis, to quash bench warrants, to vacate order for issuance thereof, and to discharge bail, be and each of them is hereby Denied;

4. That the Government's demurrers to pleas in abatement of defendants Charles Helbing, Dave Ryan, John Mullen, Walter O'Leary, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, the United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, Charles Roe, D. J. Edwards, W. P. Kelly, H. Lidley, W. L. Wilcox, M. D. Cicinato, J. P. Sholden, C. H. Irish, Otto W. Sammet, and Emil H. Ovenberg, be and each of them is hereby Sustained; and the plea in abatement of each of said defendants is hereby Denied;

5. That the demand and motion for bill of particulars of defendants The United Brotherhood of Carpenters and Joiners of America, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, The Alameda County [99] Building and Construction Trades Council, J. F. Cambiano, Dave Ryan, James Rickets, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, H. Lidley, W. L. Wilcox, Walter O'Leary, M. D. Cicinato, J. P. Sholden,

C. H. Irish, George S. Smoot, Otto W. Sammet, and Emil H. Ovenberg, be and the same is hereby Denied;

6. That the demand and motion of defendant The San Francisco Building and Construction Trades Council for a bill of particulars, be and the same is hereby Denied;

7. That the demand and motion for bill of particulars of Commercial Fixture and Store Front Institute, Mullen Manufacturing Company, Ful-Vue Fixture Co., Fink & Schindler Co., Exposition Wood Working Co., L. & E. Emanuel, Inc., William Bateman, Uni-Bilt Fixture Co., H. Schulte & Son, Ostlund & Johnson, Brass & Kuhn Company, J. G. Ennes, Charles F. Stauffacher, Joseph L. Emanuel, Richard Kuhn, and C. J. Wood, be and each of them is hereby Denied;

8. That the demurrers of defendants The United Brotherhood of Carpenters and Joiners of America, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, The Alameda County Building and Construction Trades Council, J. F. Cambiano, Dave Ryan, James Rickets, Charles

Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, H. Lidbey, [100] W. L. Wilcox, Walter O'Leary, M. D. Cicinato, J. P. Sholden, C. H. Irish, George S. Smoot, Otto W. Sammet, and Emil H. Ovenberg, be and each of them is hereby Overruled;

9. That the demurrer of defendant The San Francisco Building and Construction Trades Council, be and the same is hereby Overruled;

10. That the demurrer of defendants Mangrum, Holbrook & Elkus, a corporation, and Eugene S. Elkus, and S. Kulchar (being the person described in the indictment as S. Kulcher), an individual doing business as S. Kulchar & Co. (described in the indictment as S. Kulcher & Co.), to the indictment be and the same is hereby Overruled;

11. That the demurrers of Commercial Fixture and Store Front Institute, Mullen Manufacturing Company, Ful-Vue Fixture Co., Fink & Schindler Co., Exposition Wood Working Co., L. & E. Emanuel, Inc., William Bateman, Uni-Bilt Fixture Co., H. Schulte & Son, Ostlund & Johnson, Brass & Kuhn Company, J. G. Ennes, Charles F. Stauffacher, Joseph L. Emantel, and Richard Kuhn, be and each of them is hereby Overruled;

12. That the demurrers of defendants Pacific Manufacturing Company and J. L. Pierce, be and each of them is hereby Overruled;

13. That the demurrers of The Lumber Products Association, Inc., a corporation, and Acme Manufacturing Co., Inc., a corporation, J. A. Hart Mill & Lumber Co., Warden Brothers (a partner-

ship described in the indictment as composed of Anna K. Warden and Carl A. Warden, copartners), Brannan Street Planing Mill (a partnership described in the indictment as composed of Albert B. [101] Veyhle and Charles Gustafson, copartners), Sage & Wilder (a partnership described in the indictment as composed of Jesse L. Sage and Christian W. Wilder), Liberty Mill & Cabinet Shop (a demurrant described as a partnership in said demurrer), Eureka Sash, Door & Molding Mills, a corporation, W. P. Holmes Mill & Cabinet Shop, Carl Warden, Harry W. Gaetjen, Charles Monson, and Fred Spencer, be and each of them is hereby Overruled;

14. That the demurrers of defendants C. J. Wood and the Redwood Manufacturers Company, a corporation, be and each of them is hereby Overruled;

15. That the demurrers of defendants Smith Lumber Company, a corporation, and Reginald Smith, be and each of them is hereby Overruled.

In regard to the motions to quash bench warrants and vacate order for issuance thereof made by certain defendants, the court's ruling thereon is predicated upon repeated statements made by the Special Assistant to the Attorney General in open court, that the Government does not intend to prosecute the partnership entities as such, and that it was the Government's original intention to proceed only against the individual members of such partnerships. I regard this attitude of Government

Counsel as in the nature of a nolle prosequi, or an agreement on the part of the Government not to prosecute said partnerships as such, but only the individual members thereof. The indictment sufficiently charges these individual defendants, describing them as members of such partnerships.

Dated: November 22, 1940.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Nov. 22, 1940. [102]

[Title of District Court and Cause.]

DEMURRER OF ANNA K. WARDEN, ALBERT B. VEYHLE, JESSE L. SAGE, CHRISTIAN A. WILDER, CHARLES GUSTAFSON AND CARL WARDEN TO THE INDICTMENT

Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder, Charles Gustafson and Carl Warden, severally, but not jointly, demur to the indictment and to each of the counts therein on the following grounds:

I.

The indictment does not state facts sufficient to constitute [103] any offense by these demurrants, or by any of them, against the United States.

II.

Count One of the indictment does not state facts sufficient to constitute any offense by these demurrants, or by any of them, against the United States.

III.

Count One of the indictment does not state facts sufficient to constitute any offense by these demurrants, or by any of them, under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

IV.

Count Two of the indictment does not state facts sufficient to constitute any offense by these demurrants, or by any of them, against the United States.

V.

Count Two of the indictment does not state facts sufficient to constitute any offense by these demurrants, or by any of them, under Section 2 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

VI.

Count One of the indictment is duplicitous in that it charges or purports to charge more than one separate and distinct offense against the United States, namely:

(a) A combination and conspiracy to exclude manufacturers of millwork and patterned lumber located in states other than California from selling millwork and patterned lumber in the San Fran-

cisco Bay area and from Shipping such millwork and patterned lumber in interstate trade and commerce into the San Francisco Bay area.

(b) A combination and conspiracy to curtail, restrict and prevent lumber yards and jobbers in the San Francisco Bay [104] area from purchasing and shipping or causing to be shipped in interstate commerce in the San Francisco Bay area millwork and patterned lumber manufactured in states other than California.

(c) A combination and conspiracy to raise, fix, stabilize and maintain prices for millwork and patterned lumber shipped in interstate commerce into the State of California for sale in the San Francisco Bay area.

VII.

Count One of the indictment is defective for repugnancy in that it charges or purports to charge in one and the same count that the defendants combined and conspired to exclude from the San Francisco Bay area and from sale therein millwork and patterned lumber manufactured in states outside of the State of California and also that they combined and conspired to raise, fix, maintain and stabilize prices in the San Francisco Bay area of millwork and patterned lumber manufactured in states outside of California, these charges being inconsistent and repugnant since the second supposes and requires the continued importation of out-of-state millwork and lumber, and not its exclusion.

VIII.

Count Two of the indictment is duplicitous in that it charges or purports to charge more than one separate and distinct offense against the United States, namely:

(a) A combination and conspiracy to monopolize part of the interstate trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area.

(b) A combination and conspiracy to attempt to monopolize [105] part of the interstate trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area.

(c) An attempt to monopolize part of the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area.

(d) A combination and conspiracy in restraint of trade and commerce in millwork and patterned lumber among the several states of the United States.

(e) A combination and conspiracy to exclude manufacturers of millwork and patterned lumber located in states other than California from selling millwork and patterned lumber in the San Francisco Bay area and from shipping such millwork and patterned lumber in interstate trade and commerce into the San Francisco Bay area.

(f) A combination and conspiracy to curtail, restrict and prevent lumber yards and jobbers in

the San Francisco Bay area from purchasing and shipping or causing to be shipped in interstate commerce in the San Francisco Bay area millwork and patterned lumber manufactured in states other than California.

(g) A combination and conspiracy to raise, fix, stabilize and maintain prices for millwork and patterned lumber shipped in interstate commerce into the State of California for sale in the San Francisco Bay area.

(h) A combination and conspiracy to monopolize the business of selling and distributing millwork and patterned lumber shipped in interstate commerce into the San Francisco Bay area.

(i) A combination and conspiracy to prevent, eliminate and suppress all competition in the manufacture and sale of mill-[106] work and patterned lumber from manufacturers and dealers outside of the San Francisco Bay area.

(j) A combination and conspiracy to establish and maintain uniform, monopolistic and non-competitive prices for the sale of millwork and patterned lumber shipped in interstate trade into the San Francisco Bay area.

(k) A combination and conspiracy to eliminate and prevent all millwork and patterned lumber manufacturers and dealers other than those having their principal place of business and mill in the San Francisco Bay area from engaging in the sale and distribution of millwork and patterned lumber in said area.

IX.

Count Two of the indictment is defective for repugnancy in that it charges or purports to charge in one and the same count, on the one hand, that the defendants combined and conspired with the object of monopolizing the business of selling millwork and patterned lumber in the Bay area shipped in interstate commerce and of establishing and maintaining uniform, monopolistic and non-competitive prices for the sale of millwork and patterned lumber shipped in interstate commerce into the San Francisco Bay area, which said objects presuppose and require the continuance of the importation in interstate commerce of millwork and patterned lumber into the San Francisco Bay area; while, on the other hand, it also charges that the defendants combined and conspired with the object of excluding from the San Francisco Bay area all millwork and patterned lumber produced outside of the State of California, which said object presupposes and requires the termination of interstate commerce in the San Francisco Bay area of millwork and patterned lumber [107] produced outside of the State of California.

X.

Count One of the indictment is vague, indefinite and uncertain to such an extent that the demurrants are not advised of the nature of the charges against them, if any, so that they, or any of them, may properly prepare and submit defenses thereto, and no facts are stated sufficient to notify the demur-

rants, or any of them, of the nature of the accusations, if any, for which they and each of them are now sought to be placed on trial, as required by the Sixth Amendment to the Constitution of the United States.

XI.

Count One of the indictment is vague, indefinite and uncertain as aforesaid in this, that it is not stated therein nor can it be ascertained therefrom:

1. How the defendant Lumber Products Association, Inc., not having been incorporated until November, 1938, as alleged in paragraph 7 of the indictment, could have

(a) Entered into or been a party to any agreement with the other defendants in the year 1936, as alleged in paragraph 28, subdivision (a) of the indictment; or

(b) Pursuant to any understanding set out in said paragraph 28, subdivision (a) of the indictment, entered into a contract and agreement on September 21, 1936, as alleged in said paragraph 28, subdivision (b) of the indictment; or

(c) Have continued in full force and effect by subsequent agreements and understandings an agreement to which it was not a party, as alleged in paragraph 28, subdivision (c) of the indictment; or

(d) In June, 1937, prevented the sale and delivery [108] of a carload of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from the Ewauna Box Company, as alleged in paragraph 28, subdivision (h) of the indictment; or

(e) In June, 1938, forced the Jones Hardwood Company of San Francisco to cancel a certain order for millwork and patterned lumber as alleged in paragraph 28, subdivision (i) of the indictment; or

(f) In January, 1938, prevented the unloading of railroad freight cars bearing millwork and patterned lumber in interstate commerce from states other than California to the San Francisco Bay area, as alleged in paragraph 28, subdivision (j) of the indictment.

2. How, or in what manner, the defendants in June, 1937, prevented the sale and delivery of a carload of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from the Ewauna Box Company of Klamath Falls, Oregon, to Chris M. Winniger for sale in the San Francisco Bay area, or on other dates prevented the sale and delivery of carloads of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from states other than California for sale in the San Francisco Bay area, all as alleged in paragraph 28, subdivision (h) of the indictment.

3. How, or in what manner, the defendants have, at various dates to the Grand Jurors unknown, forced other purchasers of millwork and patterned lumber to cancel orders for millwork and patterned lumber from manufacturers located in states other than California, all as alleged in paragraph 28, subdivision (i) of the indictment. [109]

XII.

Count Two of the indictment is vague, indefinite and uncertain to such an extent that demurrants are not advised of the nature of the charges against them, if any, so that they, or any of them, may properly prepare and submit defenses thereto, and no facts are stated sufficient to notify the demurrants, or any of them, of the nature of the accusations, if any, for which they and each of them are now sought to be placed on trial, as required by the Sixth Amendment to the Constitution of the United States.

XIII.

Count Two of the indictment is vague, indefinite and uncertain, as aforesaid, in this, that it is not stated therein nor can it be ascertained therefrom:

1. Whether the defendants had or have any power to monopolize the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area in the State of California.

2. Whether the defendants had or have any intent to monopolize the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area in the State of California.

3. Whether all or any substantial proportion of the mills, sawmills, or cabinet shops in states other than California manufacturing millwork and patterned lumber fail or failed to conform to the rates of wages and working conditions of the collective

bargaining agreements between the defendant unions and the defendant manufacturers.

4. Whether the defendants knew, supposed or believed that all or any substantial proportion of the mills, sawmills, [110] and cabinet shops in states other than California manufacturing millwork and patterned lumber fail or failed to conform to the rates of wages and working conditions of the collective bargaining agreements between the defendant unions and the defendant manufacturers.

Wherefore, the demurrants severally pray that this demurrer be sustained and the indictment be dismissed as against them and that these demurrants and each of them be hence dismissed by the Court.

**BROBECK, PHLEGER &
HARRISON**

JAMES M. THOMAS

Attorneys for Anna K. Warden,
Albert B. Veyhle, Jesse L.
Sage, Christian A. Wilder,
Charles Gustafson and Carl
Warden.

(Admission of Service)

[Endorsed]: Filed Nov. 26, 1940. [111]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday the 30th day of November, in the year of our Lord one thousand nine hundred and forty.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

In this case the defendants J. F. Cambiano and * * * were present in Court with their Attorneys Hugh McKevitt, Esq., and Jack M. Howard, Esq. Charles C. Pearce, Esq., Special Assistant to the Attorney General, was present for and on behalf of the United States.

The defendants were called to plead. Mr. Howard waived the reading of the Indictment. Each defendant entered a plea of "Not Guilty" of the charges contained in the Indictment, which said pleas were ordered entered. [112]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 2nd day of December, in the year of our Lord one thousand nine hundred and forty.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977-S.

[Title of Cause.]

This case came on regularly this day for entry of pleas of the defendants. Morris R. Clark, Esq., and Charles C. Pearce, Esq., Special Assistants to the Attorney General, were present for and on behalf of the United States. Harold C. Faulkner, Esq., Hugh K. McKevitt, Esq., Jack M. Howard, Esq., J. M. Thomas, Esq., Melbert B. Adams, Esq., Moses Lasky, Esq., and Rinaldo Sciaroni, Esq., were present as Attorneys for the various defendants.

After hearing the Attorneys for the respective parties, and in accordance with the stipulation of the Attorneys regarding the demurrers and Demands for Bills of Particulars, filed this day, It Is Ordered that each and every Demurrer filed by the defendants be and the same is hereby overruled, that each and every Demand for Bill of Particulars

filed by the defendants be and the same is hereby denied. The [113] defendants were allowed exceptions to the ruling of the Court overruling the Demurrers and Denying the Demand for Bill of Particulars.

The defendants were called to plead and thereupon each of the Attorneys for the defendants waived the reading of the Indictment. Each of the following named defendants entered a plea of "Not Guilty" to the Indictment herein, to-wit: * * *, Charles Gustafson, * * *, Carl A. Warden, * * *, * * *, * * *, Christian A. Wilder, * * *, * * *, * * *, Acme Manufacturing Co., Inc., by Charles Monson, President; The Alameda County Building and Construction Trades Counsel, by Charles Roe; The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, by David H. Ryan, Secretary; * * *, * * *, Eureka Sash Door & Moulding Mill, by Fred Spencer, Vice President; * * *, * * *, J. A. Hart Mill & Lumber Co., by J. A. Hart, Owner; * * *, * * *, The Lumber Products Association, Inc., by Harry W. Gaetjen, Secretary; * * *, * * *, * * *, * * *, * * *, The United Brotherhood of Carpenters and Joiners of America, by Dave Ryan, Secretary; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, by Charles Helbing, Secretary; * * *, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, by Emil Ovenberg; W. P. Holmes Mill & Cabinet Shop, by William P.

Holmes, Owner; * * *, W. P. Kelly, Charles Monson, Emil H. Ovenberg, * * *, Fred Spencer, W. L. Wilcox, * * *, D. J. Edwards, Harry W. Gaetjen, * * *, Charles Roe, * * *, * * *, Charles Helbing, * * *, Walter O'Leary, Dave Ryan, * * *, Carl Warden, W. P. Holmes, * * *. Court ordered that said pleas be entered.

* * * * *

Upon motion of Mr. Doyle, it is ordered that this case [114] be continued to December 9, 1940, for entry of pleas of certain defendants.

After hearing the Attorneys for the respective parties, it is ordered that the trial of this case be and the same is hereby set for January 21, 1941. [115]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday the 1st day of November, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

This case came on this day ex parte. The following appearances were made herein, viz: Attorneys appearing for and on behalf of defendants:

Attorneys

MAURICE HARRISON, Esq., and**J. M. THOMAS, Esq.,**

Defendants

Lumber Products Association,
Aeme Manufacturing Co.,
Eureka Sash, Door & Moulding
Mills,

Christian A. Wilder,

J. A. Hart,

W. P. Holmes,

Harry W. Gaetjen,

Charles Monson,

Fred Spencer,

* * *

Charles Gustafson. [116]

Attorneys

* * *

MORGAN J. DOYLE, Esq.,

Defendants

* * *

Boorman Lumber Company,

Hogan Lumber Company,

Loop Lumber & Mill Co.,

Tilden Lumber Co.,

E. K. Wood Lumber Co.,

Zenith Mill & Lumber Co.,
Eureka Mill & Lumber Co.,
Wood Products Co., Inc.,
D. N. Edwards,
Nels Nelson,
Andrew Nelson,
Robert Shannon,

Charles S. Burdell, Esq., Special Attorney for the United States, was present on behalf of the Government.

Upon motion of Mr. Harrison and with the consent of the Court, It Is Ordered that the defendants represented by Mr. Harrison be and each is hereby allowed to withdraw the former plea of "Not Guilty." and enter a plea of Nolo Contendere. Thereupon Mr. Harrison, on behalf of the following defendants, entered a plea of "Nolo Contendere", which said pleas were ordered entered as to the hereinafter named defendants, to-wit:

Lumber Products Association, Acme Manufacturing Co., Eureka Sash, Door & Moulding Mills, Christian A. Wilder, J. A. Hart, W. P. Holmes, Carl Warden, Harry W. Gaetjen, Charles Monson, Fred Spencer, Charles Gustafson.

Upon motion of Morgan J. Doyle, Esq., and with consent of the Court, It is ordered that the defendants represented [117] represented by him be and each is hereby allowed to withdraw the former plea

of "Not Guilty" and enter a plea of Nolo Contendere. Thereupon Morgan J. Doyle, Esq., on behalf of the following defendants, entered a plea of "Nolo Contendere"; which said pleas were ordered entered, viz:

Boorman Lumber Company, Hogan Lumber Company, The Loop Lumber & Mill Co., Tilden Lumber Co., E. K. Wood Lumber Co., Zenith Mill & Lumber Co., Wood Products, Inc., D. N. Edwards, Nels Nelson, Andrew Nelson, Robert Shannon, Eureka Mill & Lumber Co., * * *

It is further ordered that the matter of the pronouncing of judgment herein be and the same is hereby continued to November 29, 1941.

[118]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday the 6th day of November, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable Harold Louderback, District Judge, sitting for and on behalf of Honorable A. F. St. Sure, District Judge.

No. 26977-S.

[Title of Cause.]

* * *

Morgan J. Doyle, Esq., Attorney for the Smith Lumber Co., moved the Court that the said defendant be allowed to withdraw its former plea of "Not Guilty" and enter a plea of Nolo Contendere. After hearing Mr. Doyle and with the consent of Mr. Burdell, it is ordered that the said motion be granted and that the plea of "Not Guilty" be withdrawn. Thereupon said defendant, through its Attorney Mr. Doyle, entered a plea of Nolo Contendere, which plea the Court accepted. Ordered that the matter of judgment be continued to November 29, 1941. [119]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday the 10th day of November, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

This case came on regularly this day for trial. Tom C. Clark, Esq., Charles S. Burdell, Esq., Wal-

lace Howland, Esq., Special Assistants to the Attorney General, were present. A. J. Zirpoli, Esq., Assistant United States Attorney, and Walter M. Lehman, Esq., Special Attorney, were present for and on behalf of the United States.

The following defendants were present with their respective Attorneys, viz:

Defendants	Attorneys
* * *	* [120]

Defendants	Attorneys
Alameda County Building and Construction Trades Council	

CLARENCE E. TODD, Esq.,

* * * * *

The United Brotherhood of Carpenters and Joiners of America,

The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America,

The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42,

* * *

The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550,

* * *
JOSEPH O. CARSON, SR., Esq.,
JOSEPH O. CARSON, II, Esq.,
HUGH K. McKEVITT, Esq.,
JACK HOWARD, Esq.,
THOMAS E. KERWIN, Esq.,
HARRY ROUTZOHN, Esq.,
CHARLES H. TUTTLE, Esq.

J. F. Cambiano, * * *, D. J. Edwards, Charles Helbing, C. H. Irish, W. P. Kelly, * * *, Walter O'Leary, Emil H. Ovenberg, * * *, Charles Roe, Dave Ryan, * * *, W. L. Wilcox.

Upon motion of Hugh K. McKevitt, Esq., It Is Ordered that Joseph O. Carson, Sr., Esq., Joseph O. Carson, II, Esq., Charles H. Tuttle, Esq., Thomas E. Kerwin, Esq., and Harry Routzohn, Esq., be and each is hereby associated as an Attorney for the defendants; and that they be admitted to practice in this Court only for the purpose of appearing as one of the Attorneys in this cause.

Upon motion of Mr. Zirpoli, It Is Ordered that the Second Count of the Indictment as to each and every defendant this day on trial be dismissed.

Thereupon the following persons, viz: [121]

1. William J. Nugent,
2. Elizabeth W. Newman,
3. Rowland P. Kearns,
4. Lynda Buchanan,
5. George A. Nicholls,
6. Ida Louisa Lindbeck,
7. Augusta T. Austin,

8. Lillian T. Bolin,
9. Charlotte T. Heckman,
10. Louis H. Heard,
11. Mabelle D. Nelson,
12. William B. Brandenburg,

twelve good and lawful jurors, were, after being duly examined under oath, accepted and sworn to try the issues joined herein.

Pursuant to Section 417-A of Title 28 of the U. S. Code, the Court now finds that this trial is likely to be a protracted one and directed the calling of two additional Jurors to sit with the jury and to be known as "Alternate Jurors," and to be drawn from the same source and in the manner, and having the same qualifications as the Jurors already accepted.

Thereupon the following persons, viz:

1. Mrs. Miriam Westerman,
2. Mrs. Elizabeth Gray,

two good and lawful jurors, were, after being duly examined under oath, accepted and sworn as Alternate Jurors to try the issues joined herein.

Mr. Clark made a statement to the Court and Jury on behalf of the United States. Mr. Routzohn, Mr. Tuttle, Mr. Tobriner, Mr. Todd, Mr. Faulkner and Mr. Baigalupi made statements to the Court and Jury on behalf of the defendants.

The hour of the adjournment having arrived, the Court admonished the Jury, and the further trial hereof was continued until Wednesday, November 12, 1941, at 10 o'clock A.M., and the Jury excused until 2 o'clock P. M. [122]

[Title of District Court and Cause.]

**BILL OF EXCEPTIONS ON BEHALF OF
CHRISTIAN A. WILDER AND CHARLES
GUSTAFSON**

Be It Remembered:

On June 26, 1940, the Grand Jury of the United States in and for the Northern District of California found and returned to, and before the above-entitled court its indictment herein. On June 26, 1940, a citation was issued and directed to Brannan Street Planing Mill, a partnership, as follows: [123]

“Northern District of California, ss.

The President of the United States of America,
To the Marshal of the United States of
America, for the Northern District of Cali-
fornia—Greeting:

Whereas, at the Southern Division of the United States District Court for the Northern District of California, begun and held at the City of San Francisco, within and for the District aforesaid, on the 26/day of June A.D. 1940, the Grand Jurors in and for the said Division and District brought into the said Court a True Bill of Indictment against Brannan Street Planing Mill, a partnership composed of Albert B. Veyhle and Charles Gustafson, Defendant, 560 Brannan Street, San Francisco, Calif., for violation of 26 Stat. 209, secs. 1 and 2 (15 U.S.C.A. Secs. 1 and 2), Violation of anti-trust laws.

Now, Therefore, we do hereby empower and strictly charge and command you, the said Marshal, that you cite and admonish the said Defendant, if it shall be found in your District, that it be and appear before the said District Court within ten (10) days after service hereof, at 10 o'clock in the forenoon, at the Court Room thereof, in the City of San Francisco, State of California, then and there to answer the said Indictment, and to make its allegations in that behalf.

And Have You Then and There This Writ.

Witness, the Honorable A. F. St. Sure, Judge of said Court, this 26th day of June, in the year of our Lord one thousand nine hundred and forty and of our Independence the one hundred and sixty-fourth.

WALTER B. MALING,

Clerk

By M. E. VAN BUREN

Deputy Clerk

FRANK J. HENNESSY

United States Attorney"

The citation was served on Brannan Street Planing Mill on July 8, 1940, and returned on July 25, 1940.

On June 26, 1940, a citation was issued and directed to Sage & Wilder, a partnership, as follows:

“Northern District of California, ss.

The President of the United States of America,
To the Marshal of the United States of
[124] America, for the Northern District
of California—Greeting:

Whereas, at the Southern Division of the
the United States District Court for the North-
ern District of California, begun and held at
the City of San Francisco, within and for the
District aforesaid, on the 26 day of June A.D.
1940, the Grand Jurors in and for the said
Division and District brought into the said
Court a True Bill of Indictment against Sage
& Wilder, a partnership, composed of Jesse L.
Sage and Christian A. Wilder, Defendant, 2156
San Bruno Avenue, San Francisco, Calif., for
violation of 26 Stat. 209, Secs. 1 and 2 (15
U.S.C.A. Secs. 1 and 2) Violation of anti-trust
laws.

Now Therefore, we do hereby empower and
strictly charge and command you, the said Mar-
shal, that you cite and admonish the said De-
fendant, if it shall be found in your District,
that it be and appear before the said District
Court within ten (10) days after service hereof,
at 10 o'clock in the forenoon, at the Court Room
thereof, in the City of San Francisco, State of
California, then and there to answer the said
Indictment, and to make its allegations in that
behalf.

And Have You Then and There This Writ.
Witness, the Honorable A. F. St. Sure, Judge
of said Court, this 26th day of June, in the year
of our Lord one thousand nine hundred and
forty and of our Independence the one hundred
and sixty-fourth.

WALTER B. MALING

Clerk

By M. E. VAN BUREN

Deputy Clerk

FRANK J. HENNESSY

United States Attorney"

The citation was served on Sage & Wilder on July 1, 1940, and returned on July 2, 1940.

On June 26, 1940, warrants were issued for the arrest of the individual defendants named in paragraph 22 of the indictment.

No warrants were issued for the arrest of Christian A. Wilder or Jesse L. Sage, his partner in the copartnership of Sage & Wilder, or for the arrest of Charles Gustafson or Albert B. Veyhle, his partner in the copartnership of Brannan Street Planing Mill, until October 16, 1940, when warrants were issued in the circumstances hereafter described.

On July 12, 1940, an appearance was filed herein on [125] behalf of Brannan Street Planing Mill, a partnership, and Sage & Wilder, a partnership, the appearance reading as follows:

[Title of Court and Cause omitted]

**“ATTORNEYS’ WRITTEN APPEARANCE
FOR CERTAIN DEFENDANTS**

To Mr. Walter B. Maling, Clerk:

Please enter our appearance in the above entitled action as the attorneys for the following defendants, viz:

Lumber Products Association, Inc., a corporation, 3196-24th Street, San Francisco, California;

Acme Manufacturing Co., Inc., a corporation, 345 Bay Shore Boulevard, San Francisco, California;

J. A. Hart Mill & Lumber Co., individual, Jerrold and Napoleon Streets, San Francisco, California;

Warden Brothers, a partnership, 2501 Army Street, San Francisco, California;

Brannan Street Planing Mill, a partnership, 560 Brannan Street, San Francisco, California;

Sage & Wilder, a partnership, 2156 San Bruno Avenue, San Francisco, California;

Liberty Mill & Cabinet Shop, individual, 1433 Van Dyke Avenue, San Francisco, California;

Eureka Sash, Door & Molding Mills, a corporation, 1715 Mission Street, San Francisco, California;

Carl Warden, president of The Lumber Products Association, Inc., and partner in Warden Bros.;

Harry W. Gaetjen, secretary of The Lumber Products Association, Inc.;

Charles Monson, president of The Lumber Products Association, Inc., and President of the Acme Manufacturing Co., Inc.;

Fred Spencer, president of the Eureka Sash Door and Moulding Mills;

W. P. Holmes Mill & Cabinet Shop, individual, Sixth and Channel Streets, San Francisco, California.

**BROBECK, PHLEGER &
HARRISON**

Crocker Bldg., S. F.

JAMES M. THOMAS

703 Market Street, S. F.

Attorneys for the Defendants
above named." [126]

No appearance was filed on behalf of Charles Gustafson or on behalf of Christian A. Wilder until November 28, 1940.

On July 15, 1940, Sage & Wilder, a partnership, and Brannan Street Planing Mill, a partnership, were arraigned, each as a partnership, and the corporate defendants and the individual defendants named in paragraph 22 of the indictment were arraigned herein at the same time, but Charles Gustafson and Christian A. Wilder were not arraigned.

On October 1, 1940, Brannan Street Planing Mill, a partnership, and Sage & Wilder, a partnership, before submitting any plea or taking any other action in this cause, filed herein a motion as follows:

[Title of Court and Cause omitted]

**"MOTION OF DEFENDANTS WARDEN
BROTHERS, BRANNAN STREET
PLANING MILL, SAGE & WILDER,
AND LIBERTY MILL AND CABINET
SHOP TO QUASH INDICTMENT**

The defendants, Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, and Liberty Mill and Cabinet Shop, a partnership, severally move the court to quash the indictment and each of the two counts thereof on the ground that said indictment and the two counts thereof are not sufficient in law to require these defendants to plead thereto, and for special reasons these defendants specify that each of these defendants is a partnership and not a person, corporation or association; that the indictment and each of the two counts purport to indict these defendants as partnerships, and that a partnership, as such, cannot be indicted for a crime.

J. M. THOMAS

**BROBECK, PHLEGER &
HARRISON**

Attorneys for defendants,

Warden Brothers, et al."

On October 1, 1940, a demurrer to the indictment on behalf of Brannan Street Planing Mill, a partnership, and Sage & Wilder, a partnership, was

filed herein, said demurrer being set out in the record on appeal prepared herein under Rule VIII of the [127] "Rules of Practice and Procedure after Plea of Guilty, Verdict on Finding of Guilt, in Criminal Cases Brought in the District Courts of the United States and in the Supreme Court of the District of Columbia", promulgated by the Supreme Court of the United States.

On October 16, 1940, the above-entitled court made an order directing the issuance of bench warrants against Charles Gustafson and Christian A. Wilder, the order reading as follows:

[Title of Court and Cause omitted.]

"ORDER

Due cause having been shown therefor, it is hereby ordered that bench warrants should issue for the following named persons, whose addresses appear opposite their respective names:

Anna K. Warden, 2501 Army Street, San Francisco, California

Carl A. Warden, 2501 Army Street, San Francisco, California

Albert B. Veyhle, 560 Brannan Street, San Francisco, California

Charles Gustafson, 560 Brannan Street, San Francisco, California

Jesse L. Sage, 2156 San Bruno Avenue, San Francisco, California

Christian A. Wilder, 2156 San Bruno Avenue, San Francisco, California

Andrew Nelson, Tenth and Ohio Streets, Richmond, California

Albert C. Nelson, Tenth and Ohio Streets, Richmond, California

George Randolph, 661 Golden Gate Avenue, San Francisco, California

Herman Sichel, 661 Golden Gate Avenue, San Francisco, California

Ella Bateman, 1915 Bryant Street, San Francisco, California

Jessie Bateman, 1915 Bryant Street, San Francisco, California

Phylliss Dennis, 1915 Bryant Street, San Francisco, California

The clerk of this court is accordingly authorized and instructed to issue said bench warrants for the arrest of the above-entitled persons.

A. F. ST. SURE

Judge of the United States
District Court

October 16, 1940"

On October 16, 1940, pursuant to said order, a bench warrant was issued out of the above-entitled court directed to Charles Gustafson, the bench warrant reading thus: [128]

"UNITED STATES OF AMERICA

Northern District of California—ss.

Filed: Oct. 28 - 1940. Walter B. Maling,

Clerk

MD 46573 Crim.

Received Oct. 16, 1940. U. S. Marshal's Office, San Francisco, Calif.

To the Marshal of the United States of America, for the Northern District of California, and his Deputies, or any or either of them,

No. 26977S.

Bail \$1,000.00.

Greeting:

Whereas, at the Southern Division of the United States District Court for the Northern District of California, begun and held at the City and County of San Francisco, within and for the district aforesaid, on the 26th day of June, in the year of our Lord one thousand nine hundred and forty the Grand Jurors in and for the said Division and District brought into the said Court a true Bill of Indictment against Charles Gustafson, 560 Brannan Street, San Francisco, California, for violation of 26 Stat. 209, §1 and 2 (15 U.S.C. § 1 and 2) Violation of anti-trust laws as by the said Indictment, now remaining on file and of record in said Court, will fully and at large appear; to which Indictment the said Charles Gustafson has not yet appeared or pleaded:

Now, therefore, you are hereby commanded in the name of the President of the United States of America, to apprehend the said

Charles Gustafson and him bring before the said Court, at the United States District Court Room, in the City and County of San Francisco, to answer the Indictment aforesaid.

Witness: The Hon. A. F. St. Sure, Judge of the said District Court, and the seal thereof, at the City and County of San Francisco, the 16th day of October, A. D. 1940

Attest:

WALTER B. MALING, Clerk

By M. E. VAN BUREN

Deputy Clerk

FRANK J. HENNESSY

U. S. Attorney"

On October 28, 1940, Charles Gustafson was arrested by the United States Marshal for the Northern District of California pursuant to the warrant. The warrant was returned on October 28, 1940, the return reading thus: [129]

"MARSHAL'S OFFICE

United States of America, Northern District of California.

In obedience to the Warrant, I have the body of the said Charles Gustafson before the Honorable the United States Commissioner Ernest E. Williams at San Francisco in and for the Northern District of California, this 28th day of October, A. D. 1940, where he was released on bond.

Defendant surrendered at Marshal's office.

GEORGE VICE,

U. S. Marshal.

By CHARLES T. McCARTHY,

Deputy U. S. Marshal."

On November 1, 1940, Charles Gustafson filed herein a certain bail bond in the amount fixed by order of court and in the form required by law and was released from custody on bail.

On October 16, 1940, pursuant to said order of the same day, a bench warrant was issued out of the above-entitled court directed to Christian A. Wilder, the bench warrant reading as follows:

"UNITED STATES OF AMERICA.

Northern District of California—ss.

Received Oct. 16, 1940, U. S. Marshal's Office, San Francisco, Calif.

To the Marshal of the United States of America, for the Northern District of California, and his Deputies, or any or either of them,

Greeting:

Whereas, at the Southern Division of the United States District Court for the Northern District of California, begun and held at the City and County of San Francisco, within and for the district aforesaid, on the 26 day of June, in the year of our Lord one thousand nine hundred and forty the Grand Jurors in and for

the said Division and District brought into the said Court a true Bill of Indictment against Christian A. Wilder, 2156 San Bruno Avenue, San Francisco, California, for violation of 26 Stat. 209, § 1 and 2 (15 U.S.C.A. §1 and 2) violation of anti-trust laws, as by the said Indictment, now remaining on file and of record in said Court, will fully and at large appear; to which Indictment the said Christian A. Wilder has not yet [130] appeared or pleaded:

Now, Therefore, You are hereby commanded in the name of the President of the United States of America, to apprehend the said Christian A. Wilder and him bring before the said Court, at the United States District Court Room, in the City and County of San Francisco, to answer the Indictment aforesaid.

Witness: The Hon. A. F. St. Sure, Judge of the said District Court, and the seal thereof, at the City and County of San Francisco, the 16th day of October, A.D. 1940.

Attest:

WALTER B. MALING,

Clerk.

By M. E. VAN BUREN,

Deputy Clerk.

FRANK J. HENNESSY,

U. S. Attorney."

On October 24, 1940, Christian A. Wilder was arrested by the United States Marshal for the Northern District of California pursuant to the warrant.

The warrant was returned on October 24, 1940, the return reading thus:

"MARSHAL'S OFFICE

United States of America, Northern District of California.

In obedience to the Warrant, I have the body of the said Christian A. Wilder before the Honorable the United States Commissioner Ernest E. Williams at San Francisco, in and for the Northern District of California, this 24th day of October, A.D. 1940, where he was released on bond.

Defendant Surrendered at Marshal's Office.

GEORGE VICE,

U. S. Marshal.

By **JOSEPH J. KENNEDY,**

Deputy U. S. Marshal."

On October 25, 1940, Christian A. Wilder filed herein a certain bail bond in the amount fixed by order of court and in the form required by law and was released from custody on bail.

On November 12, 1940, before being arraigned and before [131] submitting any plea or taking any other action in this cause, Charles Gustafson filed herein a motion as follows:

[Title of Court and Cause omitted.]

**“MOTION OF CHARLES GUSTAFSON TO
QUASH BENCH WARRANT, TO VA-
CATE ORDER FOR ISSUANCE THERE-
OF, AND TO DISCHARGE BAIL.**

Charles Gustafson, appearing specially for the sole purpose of making this motion, hereby moves the court as follows:

(1) To quash the bench warrant for his arrest issued by this court on October 16, 1940, pursuant to which Charles Gustafson was arrested by the United States Marshal for the Northern District of California on the 28th day of October, 1940;

(2) To vacate the order for the issuance of said bench warrant, which said order was made and filed on October 16, 1940;

(3) To discharge said Charles Gustafson and the sureties from all liability on the bail bond filed by said Charles Gustafson on November 1, 1940.

This motion is made on the ground that there is no indictment against the said Charles Gustafson, that no such indictment has ever been returned, that the order for issuance of said warrant and the issuance of said warrant itself was made upon the mistaken assumption that the grand jurors had brought into the above named court on June 26, 1940, a true bill of indictment against the said Charles Gustafson

for violation of '26 Stat. 209 § 1 and 2 (15 U. S. C. A. § 1 and 2), Violation of anti-trust laws'.

This motion is based upon all the papers on file herein, including the indictment, the order for issuance of bench warrant, the bench warrant, and the bail bond filed by Charles Gustafson.

Dated: November 12, 1940.

CHARLES GUSTAFSON.

J. M. THOMAS

BROBECK, PHLEGER

& HARRISON

Attorneys for Charles Gustafson."

On November 12, 1940, before being arraigned and before submitting any plea or taking any other action in this cause, Christian A. Wilder filed herein a motion as follows: [132]

[Title of Court and Cause omitted.]

"MOTIONS OF ANNA K. WARDEN, ALBERT B. VEYHLE, JESSE L. SAGE AND CHRISTIAN A. WILDER TO QUASH BENCH WARRANTS, TO VACATE ORDER FOR ISSUANCE THEREOF, AND TO DISCHARGE BAIL.

Each of the following persons, to wit, Anna K. Warden, Albert B. Veyhle, Jesse L. Sage and Christian A. Wilder, appearing specially for the sole purpose of making his or her respective mo-

tion, set forth below, and acting for himself or herself alone and not for any other, hereby moves the court as follows:

(1) To quash the bench warrant for movant's arrest issued by this court on October 16, 1940, pursuant to which the movant was arrested by the United States Marshal for the Northern District of California on the 24th day of October, 1940;

(2) To vacate the order for the issuance of said bench warrant, which said order was made and filed on October 16, 1940;

(3) To discharge said movant and the sureties from all liability on the bail bond filed by said movant on October 25, 1940.

Each of these motions is made on the ground that there is no indictment against the said movant, that no such indictment has ever been returned that the order for issuance of said warrant and the issuance of said warrant itself were made upon the mistaken assumption that the grand jurors had brought into the above named court on June 26, 1940, a true bill of indictment against the said movant for violation of '26 Stat. 209 § 1 and 2 (15 U.S.C.A. § 1 and 2), Violation of anti-trust laws'.

The motions are based upon all the papers on file herein, including the indictment, the order for issuance of bench warrant, the bench warrants, and the bail bonds filed by the several movants.

Dated: November 12, 1940.

ANNA K. WARDEN

ALBERT B. VEYHLE

JESSE L. SAGE

CHRISTIAN A. WILDER

J. M. THOMAS

BROBECK, PHLEGER

& HARRISON

Attorneys for Anna K. Warden,

Albert B. Veyhle, Jesse L. Sage

and Christian A. Wilder." [133]

Said motions were duly made and submitted, and the demurrer was submitted, and on November 22, 1940, the above-entitled court made and entered its orders as follows:

[Title of Court and Cause omitted.]

"ORDER

Ordered:

1. That the motions of Warden Brothers (a partnership described in the indictment as composed of Anna K. Warden and Carl A. Warden, copartners), Brannan Street Planing Mill (a partnership described in the indictment as composed of Albert B. Veyhle and Charles Gustafson, copartners), Sage & Wilder (a partnership described in the indictment as composed of Jesse L. Sage and Christian A. Wilder), and Liberty Mill & Cabinet Shop (a movant de-

scribed in the motion papers as a partnership) to quash the indictment be and each of them is hereby Denied;

2. That the motions of Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder, and Charles Gustafson, to quash bench warrants, to vacate order for issuance thereof, and to discharge bail, be and each of them is hereby Denied;

* * *

13. That the demurrers of The Lumber Products Association, Inc., a corporation, and Acme Manufacturing Co., Inc., a corporation, J. A. Hart Mill & Lumber Co., Warden Brothers (a partnership described in the indictment as composed of Anna K. Warden and Carl A. Warden, copartners), Brannan Street Planing Mill (a partnership described in the indictment as composed of Albert B. Veyhle and Charles Gustafson, copartners), Sage & Wilder (a partnership described in the indictment as composed of Jesse L. Sage and Christian A. Wilder), Liberty Mill & Cabinet Shop (a demurrant described as a partnership in said demurrer), Eureka Sash, Door & Molding Mills, a corporation, W. P. Holmes Mill & Cabinet Shop, Carl Warden, Harry W. Gaetjen, Charles Monson, and Fred Spencer, be and each of them is hereby Overruled;

* * *

In regard to the motions to quash bench war-

rants and vacate order for issuance thereof made by certain defendants, the court's ruling thereon is predicated upon repeated statements made by the Special Assistant to the Attorney General in open court, that the Government does not intend to prosecute the partnership entities as such, and that it was the Government's original intention to proceed only against the individual members of such partnerships. I regard this attitude of Government Counsel as in the nature of a nolle prosequi, or an agreement on the part of the Government not to prosecute said partnerships as such, but only the individual members thereof. The indictment sufficiently charges [134] these individual defendants, describing them as members of such partnerships.

Dated: November 22, 1940.

A. F. ST. SURE

United States District Judge"

FIRST EXCEPTION

To the court's order overruling the demurrer of Brannan Street Planing Mill, a partnership, and of Sage & Wilder, a partnership, said defendants then and there excepted.

SECOND EXCEPTION

To the court's order denying the motions of Brannan Street Planing Mill, a partnership, and of Sage & Wilder, a partnership, to quash the indictment, said defendants then and there excepted.

THIRD EXCEPTION

To the court's order denying the motion of Charles Gustafson to quash bench warrant, to vacate order for issuance thereof, and to discharge bail, Charles Gustafson then and there excepted.

FOURTH EXCEPTION

To the court's order denying the motion of Christian A. Wilder to quash bench warrant, to vacate order for issuance thereof, and to discharge bail, Christian A. Wilder then and there excepted.

On November 25, 1940, before being arraigned and before submitting any other plea, Charles Gustafson and Christian A. [135] Wilder filed herein a plea to the jurisdiction in words as follows:

[Title of Court and Cause omitted.]

PLEA TO THE JURISDICTION OF ANNA
K. WARDEN, ALBERT B. VEYHLE,
JESSE L. SAGE, CHRISTIAN A. WIL-
DER AND CHARLES GUSTAFSON.

Now come Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder and Charles Gustafson, claimed to be defendants in the above-entitled cause, and for plea herein say that this Court ought not to take cognizance of the in-

dictment as against them, or any of them, for the reason that this Court has no jurisdiction over them or any of them and no jurisdiction to try and determine this cause against them or any of them, on the ground that there is no indictment against them or any of them; that no such indictment has ever been returned; that the order for the issuance of bench warrants for their arrests, which said order was made on October 16, 1940, and the issuance of the bench warrants were made upon the mistaken assumption that the Grand Jurors had brought into the above named court on June 26, 1940, a true bill of indictment against the said persons for violation of '26 Stat. 209 § 1 and 2 (15 U.S.C.A. §1 and 2), Violation of anti-trust laws.

Wherefore, said parties, and each of them, pray judgment whether they or any of them shall be held bound to answer further to said indictment.

Dated: November 25, 1940.

**J. M. THOMAS,
BROBECK, PHLEGER
& HARRISON**

Attorneys for Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder and Charles Gustafson."

On November 25, 1940, the court made and entered its order overruling said plea to the jurisdiction.

FIFTH EXCEPTION

To the order overruling the plea to the jurisdiction, Charles Gustafson and Christian A. Wilder then and there excepted.

Thereupon, on November 25, 1940 Charles Gustafson and Christian A. Wilder were arraigned, and on November 26, 1940, Charles Gustafson and Christian A. Wilder filed herein their de- [136] murrer to the indictment, demurrer being set out in the record on appeal prepared herein under Rule VIII of the "Rules of Practice and Procedure after Plea of Guilty, Verdict on Finding of Guilt, in Criminal Cases Brought in the District Courts of the United States and in the Supreme Court of the District of Columbia", promulgated by the Supreme Court of the United States.

On December 2, 1940, the court made and entered its order herein overruling said demurrer.

SIXTH EXCEPTION

To the order overruling said demurrer, Charles Gustafson and Christian A. Wilder then and there excepted.

On November 1, 1941, Christian A. Wilder and Charles Gustafson entered herein, and the court received, pleas of nolo contendere to the first count of the indictment.

On November 6, 1941, upon ex parte motion by counsel for the government, a dismissal of the indictment was entered with respect to Sage & Wilder and Brannan Street Planing Mill.

On December 20, 1941, the second count of the indictment was dismissed against Charles Gustafson and Christian A. Wilder.

On December 20, 1941, the court herein rendered its sentence and judgment on the first count of the indictment against Charles Gustafson and Christian A. Wilder, which sentence and judgment was that each pay a fine of \$1,000.00.

On January 3, 1942, the court fixed February 23, 1942⁹ as the date by which appellants Christian A. Wilder and Charles Gustafson should procure to be settled and should file with the Clerk of the above-entitled court a bill of exceptions setting forth the proceedings upon which said appellants wished to rely in addition to those shown by the Clerk's record as described in Rule [137] VIII of the "Rules of Practice and Procedure after Plea of Guilty, Verdict on Finding of Guilt, in Criminal Cases Brought in the District Courts of the United States and in the Supreme Court of the District of Columbia", promulgated by the Supreme Court of the United States.

Charles Gustafson and Christian A. Wilder tender and present the foregoing as their bill of exceptions in this case and pray that the same may be settled and made a part of the record.

STIPULATION

It is hereby stipulated and agreed that the foregoing may be submitted to the District Judge to be ordered on file as the bill of exceptions in the above entitled matter.

Dated: February 19, 1942.

United States Attorney

Special Assistants to the
Attorney General
JAMES M. THOMAS
MAURICE E. HARRISON
MOSES LASKY
BROBECK, PHLEGER &
HARRISON

Attorneys for Appellants
Charles Gustafson and
Christian A. Wilder [138]

ORDER SETTLING BILL OF EXCEPTIONS

Upon the annexed stipulation, the within bill of exceptions is hereby settled and allowed, and ordered to be filed and made a part of the transcript of record herein.

Dated: February 20, 1942.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Feb. 20, 1942. [139]

[Title of District Court and Cause.]

**PROPOSED BILL OF EXCEPTIONS OF THE
UNION APPELLANTS.**

Be It Remembered that commencing on the 10th day of November, 1941, the above entitled cause came on regularly for hearing before the above entitled Court, Honorable A. F. St. Sure, Judge, presiding in the United States Court House and Post Office Building, 7th and Mission Streets, San Francisco, California.

The plaintiff was represented by Tom C. Clark, Esq., Charles S. Burdell, Esq., Wallace Howland, Esq., Special Assistants to the Attorney General, A. J. Zirpoli, Esq., Assistant United States Attorney, and Walter M. Lehman, Esq., Special Attorneys.

The defendants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; The United Brotherhood of Carpenters and Joiners of [140] America, Millmen's Union No. 42; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 262; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 1956; J. F. Cambiano, M. D. Cicinato, D. J. Edwards, Charles Helbing, C. H. Irish, W. P. Kelly, H. Lidley, Walter O'Leary, Emil H. Ovenberg, James Ricketts, Charles Roe, Dave Ryan, Otto W. Sammett, J. P. Sholden, George S. Smoot and W. L. Wilcox, were

represented by Hugh K. McKevitt, Esq., Harry Routzohn, Esq., Joseph O. Carson, II., and Jack M. Howard.

The defendant, The United Brotherhood of Carpenters and Joiners of America, was represented by Charles H. Tuttle, Esq., Joseph O. Carson, Esq., Thomas E. Kerwin, Esq., and Hugh K. McKevitt, Esq.

The defendant, Alameda County Building & Construction Trades Council, was represented by Clarence E. Todd, Esq.

The defendant, San Francisco Building and Construction Trades Council, was represented by Mathew O. Tobriner, Esq., and Rinaldo Sciaroni, Esq.

The defendants, Braas & Kuhn Company, Commercial Fixture & Store Front Institute, L. & E. Emanuel, Inc., Fink & Schindler Co., Mullen Manufacturing Company, Joseph L. Emanuel, J. C. Ennes, Richard Kuhn, John Mullen, Oscar H. Ostlund, George Randolph, Leo Roselyn, Joseph L. Schmidt, Henry Schulte, Herman Sichel and Charles F. Stauffacher, were represented by Harold C. Faulkner, Esq., Charles Albert Adams, Esq. and Melbert B. Adams, Esq.

The defendants, Mangrum, Holbrook & Elkus, Eugene S. Elkus and S. Kulcher, were represented by Messrs. Bacigalupi, Elkus & Salinger, appearing by Tadini Bacigalupi, Esq.

The plaintiff moved the Court to dismiss the second count of the indictment, and said motion as to the second count only was granted. [141]

Thereupon, Mr. Tom C. Clark made the opening statement in behalf of the plaintiff.

Mr. Harry Routzohn made an opening statement in behalf of the defendants represented by him.

Mr. Charles H. Tuttle made an opening statement in behalf of the defendant, The United Brotherhood of Carpenters and Joiners of America.

Mr. Mathew O. Tobriner made an opening statement in behalf of the defendant, San Francisco Building and Construction Trades Council.

Mr. Clarence E. Todd made an opening statement in behalf of defendant, Alameda County Building and Construction Trades Council.

Mr. Harold C. Faulkner made an opening statement in behalf of the defendants represented by him.

Mr. Tadini Bacigalupi made an opening statement in behalf of the defendants Mangrum, Holbrook & Elkus, Eugene S. Elkus and S. Kulcher.

It was thereupon stipulated that all of the defendants on trial need not be in constant attendance and that if a particular defendant was wanted by the plaintiff he would be produced by counsel.

Thereupon, in the absence of the jury, Mr. Charles H. Tuttle in behalf of defendant, The United Brotherhood of Carpenters and Joiners of America, moved to dismiss upon the ground of the insufficiency of the indictment, and said motion was orally argued by Mr. Tuttle and joined in and submitted on the same argument by the other defendants on trial. Such motions were argued by Mr. Clark and Mr. Howland

in behalf of plaintiff, and in reply by Mr. Tuttle who delivered a list of authorities to [142] the court.

The several motions made to dismiss the indictment were denied and an exception in behalf of defendants noted.

The plaintiff called upon defendant, Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, to answer to a subpoena duces tecum served upon it and Dave Ryan responded to the subpoena duces tecum and was sworn as a witness. The witness testified that his full name was David Hays Ryan and that he held an office with the Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America.

Objection was made to the witness testifying on the ground that as a defendant he could not be compelled to be a witness against himself. Such objection was sustained and it was stipulated that Mr. Ryan was Secretary of such organization and was in charge of the records, and that another witness would be produced with the books.

After colloquy between counsel concerning trial and stipulations and the production of books and records, the plaintiff called upon the United Brotherhood of Carpenters and Joiners of America, Millmen's Local No. 42, to respond to the subpoena duces tecum served upon it.

Thereupon, Alfred Paul Fromm was called as a witness in behalf of plaintiff, was duly sworn, and testified as follows:

ALFRED PAUL FROMM

Direct Examination

By Mr. Howland:

I hold at the present time the position of Recording Secretary in Local No. 42 of the United Brotherhood of Carpenters and Joiners of America, and have been served with a subpoena duces tecum addressed to such Local, and I also got one for myself. I turned over such subpoena duces tecum to the lawyers. [143]

“Mr. Howland: Q. I will ask you, Mr. Fromm, whether or not in your official capacity you have custody and access to any of the records and documents of the United Brotherhood of Carpenters and Joiners of America, Millmen’s Union No. 42?

“A. Yes.

“Mr. Howard: I ask that the answer go out for the purpose of the objection.

“The Court: Yes, it may go out.

“Mr. Howard: I wish to object to this question and object to all further questions of this witness on the ground that he, as identified by the record, is a member of Local No. 42, one of the defendants charged in the indictment and on trial, here, and as such member of an unincorporated association is required in violation of the Fifth Amendment to give testimony against himself.

“The Court: Overruled.

“Mr. Howard: May we have an exception?

“The Court: Yes.

(Testimony of Alfred Paul Fromm.)

“Mr. Howland: Q. Have you examined these books and records of which you have custody and access for the purpose of collecting therefrom the papers called for by the subpoena duces tecum addressed to Local 42? A. Yes.

“Mr. Howard: May it be understood that we have the same objection and exception?

“The Court: Yes, the same objection and an exception. The objection is overruled and an exception noted.

“Mr. Howland: Q. Referring to paragraph No. 1 of that subpoena, Mr. Fromm, do you have with you any of the documents called for therein, and that paragraph reads, constitution, charter, articles of association, and by-laws of the addressee of this subpoena? A. I have.

“Q. Will you produce them, please?

“Mr. Howard: If your Honor please, at this time I wish [144] to object to the question and the production through this witness of any books, papers, or documents of Local No. 42 on the following grounds, first that such documents or papers are the private books, documents and papers of this defendant unincorporated association, and of each individual defendant member of that association who is a defendant herein. The requirement of the production of those private books, documents and papers is in violation of the Fourth Amendment in that it constitutes an unlawful search or seizure, and it violates the Fifth Amendment to the Constitution in that it

(Testimony of Alfred Paul Fromm.)

requires the association defendant, and each member defendant to give testimony against himself. Now, if your Honor please, I think that this objection raises basic questions that will go to the whole line of testimony.

"The Court: Yes.

"Mr. Howard: We are prepared to argue it, if your Honor wishes.

"The Court: I do not care to hear any argument. The objection is overruled.

"Mr. Howard: May we have the same stipulation as to the entire line of testimony?

"The Court: Yes.

"Mr. Howard: And an exception.

"The Court: Yes.

"Mr. Howland: Q. Are they here?

"A. Yes.

"Q. Have you got them?

"A. Shall I produce them?

"Q. If you have them produce them.

"Mr. Faulkner: While the witness is getting these records might I suggest—

"The Court: Let us not interrupt this.

"Mr. Faulkner: This will apply to the objections.

"The Court: Very well. [145]

"Mr. Faulkner: And then we won't have to repeat that same objection.

"The Court: Very well, read it.

"Mr. Faulkner: It is stipulated between all counsel in the case concerning the matter of objec-

(Testimony of Alfred Paul Fromm.)

tions: At the trial of the above entitled cause any and all objections made to the introduction of evidence, unless otherwise stated at the time of such objection by either of the counsel for defendants representing any of the defendants on trial, shall be deemed for all purposes to have been made for each separate defendant on trial, to all intents and purposes as though each of said defendants separately objected and that all objections taken to any rulings on said objections shall be deemed an objection for each of the defendants on trial to all intents and purposes as though each defendant separately objected and each defendant separately excepted to any adverse ruling.

"The Court: That is satisfactory to the Court.

"Mr. Faulkner: Thank your Honor."

I have the records called for in paragraph one of the subpoena, including the constitution, charter, articles of association and by-laws, which I produce. Thereupon, four folders produced by the witness were marked for identification as plaintiff's Exhibits 1 to 4, respectively. The booklet marked Government Exhibit 1 for identification is by-laws of Local Union No. 42 as approved by the General Office in 1940, and still in effect. Booklet marked for identification No. 2 is the by-laws of the Bay District Council of Carpenters, approved on May 26, 1939 by the General Office and in effect since that date. Booklet marked for identification Government's Exhibit No. 3 is the by-laws of Local 42, being the same

(Testimony of Alfred Paul Fromm.)

as No. 1. Booklet marked for identification Government's Exhibit No. 4 is by-laws of Local Union 42, running from 1913 when approved by the General Office. [146]

"Q. Referring now to paragraph 2 of the subpoena, I will ask you whether or not you have brought with you books, ledgers, minute books, papers, and records and documents evidencing or recording or purporting to describe the proceedings and meetings of the addressee of this subpoena, including meetings of directors, trustees, members, committees, agents or officers during the period from January 1, 1936 to June 26, 1940.

"A. Yes, I think I have all of those. I have not had those possibly that long, since 1935—from 1935 up to 1940.

"Mr. Howland: Will you please mark for identification with the appropriate serial numbers the four books which the witness has produced?

"Mr. Howard: If your Honor please, we wish to make the further objection that this omnibus demand by the subpoena for documents, minutes and records as are sought to be identified here is unreasonable and an unlawful search and seizure under the Constitution of the United States.

"The Court: Overruled.

"Mr. Howard: Exception.

(The documents were marked U. S. Exhibits 5, 6, 7 and 8 For Identification.)

(Testimony of Alfred Paul Fromm.)

"Mr. Howland: I hand you these four books which have now been marked for Identification Exhibits 5, 6, 7 and 8, Mr. Fromm, and ask you if you will tell me just what they are.

A. These are the minutes of the meetings of Millmen's Local Union 42.

Q. What dates are covered by the book that has been marked Exhibit?

A. Exhibit 5 covers from July 30, 1935 to February 16, 1937.

Q. Referring to Exhibit 6, I will ask you what that is.

"Mr. Howard: May it be understood that the last objection also goes to this line of questions, your Honor? [147]

"The Court: Yes.

A. No. 6 covers the minutes from April 4, 1939 to November 26, 1940.

"The Court: Your comprehensive objection may be understood to apply to all of the testimony of this witness.

"Mr. Howard: Very well, your Honor.

A. These are the minutes of Local Union No. 42 from February 23, 1937 to November 30, 1937.

"Mr. Howland: That is Exhibit No. 7, to which you just referred? A. Yes."

Exhibit for identification No. 8 is the minute book of Local No. 42 from December 1, 1937 to March, 1939. I have held the office of Recording Secretary of Local 42 for nearly three years.

(Testimony of Alfred Paul Fromm.)

Upon request by Mr. Roitzohn the Court made an order excluding witnesses from the court room.

My duties as Recording Secretary were to take down the meetings, mark the gentlemen present, make daily entries in the books as expenditures, etc. Some of the minutes are in my own handwriting. I got the position on July 5, 1938. I have held the position since 1938, except for about a month during July and August of 1941. The entries in the four books marked Exhibits 5 to 8 during that period were made by me, personally. I have custody of all the records and minutes going back to 1935, and books purported to have been made prior to the time I took office were turned over to me. I have quite a few of the contracts and agreements, described in paragraph 3 of the subpoena, executed during the period from September 1, 1936 to June 26, 1940, but I believe the originals go to the District Council of Carpenters.

The witness thereupon produced folders which were marked Government's Exhibits 9, 10, and 11 for identification, and the clerk was directed to number the contents of the folders consecutively, 11-A, 11-B etc., so that each paper be appropriately [148] marked, and a similar paper was marked U. S. Exhibit No. 12 for identification.

Folder marked for identification Exhibit 9 contains agreements of all members of the association in the City and County of San Francisco, and Local 42 is a party to each agreement. Folder for identi-

(Testimony of Alfred Paul Fromm.)

fication No. 10 contains agreements with the different wood-work companies in San Francisco. Folder marked Exhibit 11 contains miscellaneous notes and letters between different district councils and matters in which we are a party; also different agreements as they are throughout the State. The paper marked for identification Exhibit No. 12 is unsigned copy of an agreement.

"Q. Paragraph 4 of the subpoena duces tecum calls for the introduction of letters, telegrams, correspondence and memoranda between January 1, 1936, and June 20, 1940, between Local 42 and certain parties enumerated in the subpoena relating to certain subject matters?

"Mr. Faulkner: We object to that, if your Honor please, on the ground that the proper foundation had not been laid in this respect, that this gentleman on the stand, who had charge of the correspondence, that he wrote any of these letters or received them.

"The Court: Overruled.

"Mr. Faulkner: If that is a foundation to introducing them in evidence we object to them on that ground.

"The Court: Overruled.

"Mr. Faulkner: Exception.

"Mr. Howard: We also object generally on the ground of this method of dragnet without showing the materiality.

"The Court: I presume that is all preliminary. If it is not connected up properly you may move to strike it out.

(Testimony of Alfred Paul Fromm.)

"Mr. Howard: The objection to it is it acts as a bill [149] of discovery without any right in law to do so.

"The Court: Overruled.

"Mr. Howard: May we have an exception?

"The Court: Yes, I am willing to let it be understood that an exception will be noted to every ruling of the Court, so that you won't have to ask me that question every time. Is that agreeable to you?

"Mr. Howard: Yes.

"Mr. Faulkner: Does the Government acquiesce in that statement?

"The Court: I say I am willing that the record should show that an exception has been made to every ruling made in this case on behalf of each and every defendant.

"Mr. Faulkner: That is agreeable to Counsel for the Government?

"Mr. Howard: That is agreeable to the Government.

"The Court: You will understand that there is no necessity of voicing any exception whatever."

The papers contained in the folder now marked for identification Exhibit No. 11 are the correspondence, letters, telegrams and other papers called for in paragraph 4 of the subpoena, to the best of my ability, to find them. Folder marked for identification Exhibit No. 13 contains communications and copies of communications between Local Unions and District Councils. Exhibit No. 14 contains agree-

(Testimony of Alfred Paul Fromm.)

ments entered into at different times with the Local Union. I have the custody and control over the correspondence files of Local No. 42 and have had since July 1, 1938.

"Q. I will ask you to examine the papers contained in the folders marked 11 and 13 For Identification, and tell me if the papers contained therein are in fact original letters received by Local 42 and copies of letters which you have actually sent out on [150] behalf of Local 42 during that period?

"Mr. Howard: If your Honor please, I object to the question as being entirely immaterial, incompetent, and irrelevant, immaterial in that there is no foundation shown to these letters which might have been sent out to certain parties. I object to this question.

"The Court: It seems to me that objection has been covered by you and also by Mr. Faulkner. I will rule, however, so that you may note an exception.

"Mr. Howard: Note an exception.

"Mr. Howland: May I have the question read?

(Question repeated by the reporter.)

"The Court: You may proceed.

(The reporter read the last question.)

"The Witness: Yes, these are communications received by 42, but as far as making copies of communications going out from the local, I have never made a copy. I have never filed a copy of the original."

(Testimony of Alfred Paul Fromm.)

Cross-Examination

By Mr. Faulkner:

I am recording secretary of Millmen's Local Union No. 42 and did not prepare or sign any of the contracts which I identified as copies of contracts, nor was I present when any of them were signed.

Thereupon, Edwin Fred Schulze was called as a witness in behalf of plaintiff, was duly sworn, and testified as follows:

EDWIN FRED SCHULZE

Direct Examination

By Mr. Howland:

I am Recording Secretary of Millmen's Union Local No. 550 and have held that position for approximately a year and a half. I have custody and access to the records and files of said Local, and I have books and records and other papers of [151] Local 550 which have been subpoenaed.

"Mr. Howard: Q. Do you have any of the books and records and other papers of Local 550 which have been subpoenaed? A. I have.

"Mr. Howard: May I ask the answer go out until I object?

"The Court: The answer may go out.

"Mr. Howard: I guess that is a superabundance of precaution but it is understood the same objection goes now to this——

"The Court: Yes, yes."

(Testimony of Edwin Fred Schulze.)

The only by-laws we have are the by-laws of the District Council. We work strictly out of such by-laws, and Local 550 has adopted the by-laws of the District Council of Carpenters. I don't know definitely whether we have abided by all of the by-laws—we have some, and some not—we operate under the District Council. Booklet marked Exhibit No. 15 for identification is the by-laws of the District Council of Carpenters under which the Local 550 is operating. Paper marked for identification No. 16 is a photostatic copy of the charter of Local 550. Exhibit marked for identification No. 17 is the constitution of the United Brotherhood of Carpenters and Joiners of America, and is the constitution under which Local 550 operates. Book marked for identification No. 18 has the minutes from March 28, 1935 to June 17, 1938 and the book contains the minutes of the meetings of Local 550. I have at no time had anything to do with any minutes of the Six Counties Conference Committee which, I believe, has its own Secretary, and had no such minutes within my custody as Recording Secretary of Local 550. Book marked Exhibit No. 19 for identification is the minute book of Local 550, from July 12, 1929 to and including March 21, 1935; book marked Exhibit No. 20 for identification is minutes of April 19, 1940, to and including August 29, 1941; book marked Exhibit No. 21 is minutes of June 24, 1938, up to April 12, 1940. I was Recording Secretary of [152] Local 550 from July 12, 1940, up to

(Testimony of Edwin Fred Schulze.)

the present time, and the minutes purporting to cover that period are in my own handwriting. I having personally recorded the transactions of the minutes contained in the minute books. When I first became Recording Secretary of 550, records and minutes of meetings prior to my taking office were turned over to me and are contained in the previous entries in the same books.

I believe W. C. O'Leary has been Secretary of the Six Counties Conference Committee. I know some of the members of the Six Counties Conference Committee,—W. C. O'Leary, Emil Ovenberg, Albert Cooling and Albert Perry are members from our Local, and are all I know. I don't know any of the members from other locals. I am not a member of that committee myself.

I believe these are all our agreements. I have not gone over these agreements myself.

Thereupon, file of agreements was marked U. S. Exhibit No. 22 for identification, and the clerk was instructed to mark serially beginning with the letter "A" the several documents contained in the files at his convenience. The envelope now marked as Exhibit No. 22 are all the agreements. They are the agreements called for by the subpoena. I have some of the letters, telegrams, correspondence and communications referred to in paragraph 4 of the subpoena duces tecum. The two bundles of papers marked U. S. Exhibit Nos. 23 and 24 for identification contain the letters and communications asked

(Testimony of Edwin Fred Schulze.)

for in the subpoena, I believe. They are the communications that are received by 550 in due course of mail. I have custody of the correspondence files of the Local in connection with my duties as Recording Secretary. The bundle marked Exhibit No. 23 contains more correspondence received in our regular line of duty. I have some further correspondence and some other supplementary agreements called for by one or other of the subpoenas. [153]

Thereupon, a bundle produced was marked U. S. Exhibit No. 25 for identification. All of the correspondence called for is included in the things produced.

The ledger and day books which I have are not called for by the subpoena duces tecum and do not purport to report or describe proceedings and minutes in addition to the minute books.

Cross-Examination

By Mr. Faulkner:

The Six Counties Conference Committee is strictly a union organization.

Redirect Examination

By Mr. Howland:

United States Exhibits Nos. 26, 27 and 28 for identification are the by-laws of the District Council of Carpenters; No. 29 was the one produced before and these booklets are the by-laws adopted at the periods of time indicated by the dates on the front.

Thereupon, Mr. Howland called upon the United Brotherhood of Carpenters and Joiners of America to respond to the subpoena.

"Mr. Tuttle: I will call attention to the fact that this subpoena is directed solely to the United Brotherhood. The papers called for are in the hands or custody of thirty-six persons in Indianapolis. We have made these arrangements, which I hope will be satisfactory to your Honor and counsel, that Mr. Joseph O. Carson, II., who is an attorney in the office of his father, who is general counsel for the United Brotherhood, has gathered those papers together and we make no point that they are authentic papers from the files of the United Brotherhood. We have them here, so that if counsel is willing Mr. Carson can take the witness stand, or I can furnish you with the papers you ask for. [154]"

"The Court: Yes."

"Mr. Tuttle: Either course will be agreeable to us."

"The Court: Either course will be agreeable to the Court."

"Mr. Tuttle: If you put Mr. Carson on the stand you will get the papers quicker. Your Honor will appreciate that we have the same objection as we made before?"

"The Court: Yes, let that be the understanding."

"Mr. Tuttle: The same ruling and exception."

Thereupon,

JOSEPH O. CARSON, II

was called as a witness in behalf of plaintiff, was duly sworn, and testified as follows:

Direct Examination

By Mr. Howland:

I am appearing here pursuant to the subpoena duces tecum served on the United Brotherhood.

(By Mr. Tuttle):

In compliance with the request to produce the constitution, charter and other papers called for in paragraph 1 of the subpoena, we produce two printed books,—one, the constitution in effect April 1, 1929, and the last constitution in effect April 21, 1937, which includes the laws of the United Brotherhood. The documents were marked U. S. Exhibits Nos. 30 and 31 for identification.

(By Mr. Tuttle):

In response to paragraph 2 of the subpoena to produce the minute book and other papers, we have prepared a list which I believe is authentic and comprehensive, showing the members of the Executive Board of the United Brotherhood during the period. Such list was marked U. S. Exhibit No. 32 for identification. The list also covers the general representatives called for in paragraph 3 of the subpoena. The constitution does not use the phrase "general representatives," but presumably what is meant is the [155] organizers for that district and area.

(Testimony of Joseph O. Carson, II.)

The documents marked U. S. Exhibit No. 33 are the minutes of the meetings of the Executive Board.

The documents marked U. S. Exhibit No. 34 for identification are such contracts and copies of contracts had by the United Brotherhood and called for by paragraph 5 of the subpoena, as of June 6, 1936. There were none for 1937 in the files.

The documents U. S. Exhibit No. 35 for identification, are the papers described as being for 1938. The documents marked for U. S. Exhibit No. 36 for identification are for 1939. The documents marked U. S. Exhibit No. 37 for identification are for 1940. There were none for 1937 in the files.

The folders marked, respectively, U. S. Exhibits Nos. 38, 39, 40, 41, 42 and 43 for identification contain the correspondence referred to in paragraph 6 of the subpoena, and was all that could be found after a thorough search.

The booklets marked, respectively, U. S. Exhibits Nos. 44, 45, 46, 47 and 48 for identification, are five booklets starting with the year 1936 running to 1940, having a list of the firms authorized to use the Union Label.

Records relative to the names of officers and members of the Executive Board are kept in the official General Executive Board minutes which run back prior to the year 1900 and cover the entire period of time. Some of the officers and heads of the General Executive Board were appointed more than thirty years ago, and have been continuously on the payroll

(Testimony of Joseph O. Carson, II.)

under the dates set out in the list which was taken from the payroll records and confirmed by me on the records of the General Executive Board.

Appointments of the general representatives or general organizers were made under the constitution and there are no records showing the dates of such employment other than the certificate of appointment in the man's private possession and as [156] appears on the payroll record. The list was prepared from the payroll and compared with the individual, himself.

Thereupon,

CLARENCE EDMUND WILCHMAN

was called upon as a witness in behalf of plaintiff, was duly sworn, and testified as follows:

Direct Examination

By Mr. Howland:

I am Treasurer of Local Union No. 1956 of the United Brotherhood of Carpenters and Joiners of America and have been for about five months, and I am appearing pursuant to a subpoena duces tecum served upon that organization. I have the books, records and other papers called for by the subpoena which I could get, but will have access to more records tonight due to the fact that a member who has the key to the drawer is away. He will be able to return tomorrow morning.

(Testimony of Clarence Edmund Wilchman.)

:Thereupon, Braas & Kuhn was called upon to respond to the subpoena duces tecum.

Mr. Faulkner: There are items in the subpoena having for their purpose the establishment of the corporate existence and the names of officers and directors upon which we have offered a stipulation. If the records are asked for to prove them, we withdraw the stipulation.

"The Court: You ask the question and I will rule on it. Mr. Faulkner says he will stipulate as to the corporate entity.

"Mr. Howland: Very well, we will withdraw paragraphs Nos. 1 and 3 of the subpoena.

"The Court: There is no written stipulation regarding this?

"Mr. Faulkner: No, we can read it into the record later. I will stipulate that it is a corporation and has directors whom I will later disclose.

"Mr. Howland: Very well."

After colloquy by counsel, it was understood with [157] respect to paragraph 9 in the subpoena that it would be satisfactory to have the original books of entry setting forth the payroll and that an accurate record would be supplied showing the amount of money paid to employees of the union defendants during dates specified, and that the minute book should be produced and portions deemed material and competent read into the record; that such minute books be available but not introduced in evidence.

Thereupon, Arthur W. Braas was called upon as a witness in behalf of Plaintiff, was duly sworn, and testified as follows:

ARTHUR W. BRAAS

Direct Examination

By Mr. Howland:

I am secretary of Braas & Kuhn, Incorporated, and have held the office for about twenty years. As such secretary, I have custody and access to the records and files of the corporation. I have caused a diligent search and find no matters referred to in paragraph 6 of the subpoena.

United States Exhibit No. 49 for identification, which I have produced, represents membership dues for Cabinet Manufacturers Institute at \$1 per month and comes from one of the books of original entry and the entries contained were made in the regular court of business. I have no other record of similar payments to any of the other individuals of the organizations named in paragraph 7.

Cross-Examination

By Mr. Faulkner:

So far as I know, my company has never made a power of attorney, or given any person authorization to negotiate or execute any contracts or agreements relating to wages and hours and working conditions, during the period January 1, 1935, to June 26, 1940. Neither have we authorized in writing or given the power of attorney to negotiate or execute

(Testimony of Arthur W. Braas.)

an agreement concerning the manufacture, fabrication, purchase or use of millwork [158] and pattern lumber concerning hours or working conditions regarding the manufacture, fabrication or use of millwork and pattern lumber. The printed card which I have produced (marked U. S. Exhibit No. 50 for identification) is the printed scale of wages, union hours and holidays. We have not paid to my knowledge, nor do our records show payment of any money to Lumber Products Association or any officer thereof or to Lumber Products Conference in San Francisco, Wood Products, Inc., East Bay Mill Owners Association, J. G. Ennes, Harry W. Gastjen, John Mullen, Oscar Ostlund or D. M. Edwards. The weekly payroll book shows the name of the employee, the amount he receives and the number of days and hours he works, and we have all the checks.

Thereupon, Frederick George Munk, Jr. was called upon as a witness in behalf of plaintiff, was duly sworn, and testified as follows:

FREDERICK GEORGE MUNK, JR.

Direct Examination

By Mr. Howland:

I hold the office of Vice-President of Fink & Schindler Company and have held that office since 1925. I have custody and access of records and books of that corporation, and have the books, papers and correspondence called for by the subpoena. We have not, to my knowledge, given

(Testimony of Frederick George Munk, Jr.)
power of attorney or other written authorizations called for under paragraph 4 of the subpoena. I caused a search to be made of the records under my control and found none.

United States Exhibit No. 51 for identification is a contract on wage scales. It was received by the corporation in due course of business—probably by mail, and is wholly printed. It came from the District Council of Carpenters.

Paper marked No. 52 is an agreement of working conditions and, I should say, is a paper which was received in the usual course of business. I cannot say offhand from whom it was received. The letter is from the Bay Counties District Council, I [159] imagine. The rubber stamp mark that appears at the bottom of the page is a stamp used by my company.

Exhibit 53 was received in the due course of business. Exhibit 54 is a typed memorandum as to the payment of wages fixed by the arbitration effective next pay day, and was received in due course of business, probably from the Building Trades Council, again, through the arbitration board, because at that time there was an arbitration board.

Exhibits 55 and 56 probably came to my possession by mail and are entitled "Working Conditions of Carpenters," "~~Working~~ Conditions for Millmen and Cabinet Makers."

The papers just produced are all the papers in the possession of the corporation in response to paragraph 5 of the subpoena.

(Testimony of Frederick George Munk, Jr.)

Papers marked Exhibit 57 comprise letters received by, and copies of letters sent by the corporation in due course of business, and are all the papers called for by paragraph 6.

Exhibit 58 are ledger sheets of original entry, comprising all the transactions with the concerns named at the top of them. Entries contained were made in the regular course of business. Entries on the disbursement sheet would be dues and other expenses paid to the associations named on the paper, and the dates indicated. Page out of a journal of notes and trade acceptances shows a disbursement to Mr. J. P. Ennes which was a private transaction showing payment for some stock Mr. Ennes formerly held in our company when he was a member of our company. The transaction did not in any way concern the activities or business of Cabinet Manufacturers Institute.

Document marked U. S. Exhibit No. 59 for identification is bookkeeping payroll from October 1936 to November 1, 1940, and comprises all the original records with regard to matters relating to payroll. [160]

Cross-Examination

By Mr. Faulkner:

Pursuant to the subpoena, I examined our files and produced the documents referred to.

By Mr. Tobriner:

I don't remember whether I received Exhibit 54 for identification from the Bay Counties District

(Testimony of Frederick George Munk, Jr.)

Council of Carpenters, or from San Francisco Building Trades and Construction Council. I could not answer whether there was anything received from the San Francisco Building Trades and Construction Council. As I understand it, our dealings were with the San Francisco carpenters which, I understand, are not San Francisco Carpenters and Construction Trades Council. I don't know off-hand where the memorandum came from. I believe that came from the Building Council, or through our Secretary, Mr. Ennes.

SIDNEY FISHER

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I hold the position of Secretary of L. & E. Emanuel, Incorporated, and have been secretary since some time in 1938, I believe. The books, documents and papers of the corporation are, to some extent, under my supervision. I have never seen a power of attorney for the corporation such as is referred to in paragraph 4 of the subpoena. I did not, personally, cause a search to be made. There was one made. As a result of the search such paper was not found to my knowledge. To the best of my knowledge, I have never seen any of the contracts

(Testimony of Sidney Fisher.)

or agreements called for in paragraph 5 of the subpoena. I don't know whether the company has them or not. This is the first time I have seen the subpoena. I came to work for the company in 1938 and since [161] my time there has not been any documents.

After colloquy between Court and council, there was

Cross-Examination

By Mr. Faulkner:

I have brought a pile of papers taken from the firm of L. & E. Emanuel, pursuant to subpoena served. I am familiar with the folder only to the extent of the names and things that were written or originated in our concern, or received by them. They were taken from the files by the bookkeeper who went through the files and selected the various papers produced.

Thereupon, plaintiff called upon Mangrum, Holbrook & Elkus to respond to the subpoena and, by stipulation, Mr. Bacigalupi produced certain records and identified them by statement as follows: it was stated by Mr. Bacigalupi that for said defendant he had personally caused a search of the company's records to be made and that he had everything available which would conform to the subpoena. That there were no powers of attorney, authorizations or contracts as described in the subpoena.

Thereupon, folders of correspondence were marked U. S. Exhibits Nos. 60 and 61 for identi-

(Testimony of Sidney Fisher.)

fication and it was stated that the correspondence, both outgoing and incoming, was in due course of business to and from the persons named. That certain notations with regard to the adjustment of wages in correspondence which reflected wage rates and hours and conditions, were communications in due course of business. That the ledger sheet showing payments to the Cabinet Makers' Institute supported by actual bills rendered, shows payments at times of a dollar a month for the so-called associate membership, or Class B membership. The sheet marked at the top "A" is one of the original sheets from a book of original entry. This was before July 2, 1937. The company was formed on July 2, 1937. It is in no sense a successor of Mangrum & Holbrook & Company though it took over its business. [162] They purchased the assets and the new company was formed. The old concern was also a corporation.

Thereupon, folder containing correspondence and records just referred to was marked U. S. Exhibit No. 62 for identification. The pay-roll records showing payments to union employees will be produced. The search revealed no correspondence or papers relating to joint meetings as described in paragraph 8 of the subpoena.

ROLAND J. PLATO

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I was Recording Secretary of Millmen's Union No. 42 from November 1935 to about April 1938, during which time my duties were to note the minutes of the regular meetings of the Union, which I did in the regular course of business. For the particular period, stated I noted the minutes in my own handwriting in the four books marked for identification Exhibits 6, 7, 8 and 9, and they constitute a true record of each proceeding I witnessed.

ARTHUR SMYTHURST

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I held the office of Recording Secretary of Millmen's Union No. 42 from April 19 to July 5, 1938, and my duties were to take the minutes of the meetings of Local 42. The minutes in the four books marked for identification Exhibits 6, 7, 8 and 9, with reference to the period between April and June, 1938 are in my handwriting and I, personally, prepared the notes of the meetings that I attended, and prepared the minutes in the regular course of my duties. [163]

RODNEY O'HARE

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

Since 1935, I was Recording Secretary of Millmen's Union No. 550, and later was Financial Secretary. I think I was Recording Secretary in December, 1936. During the time I was Recording Secretary my duties were to write the minutes of the meetings of the Local. The entries in Exhibits 18, 19, 20 and 21 for identification during the period from March, 1935 to November, 1936, are in my handwriting, and are minutes of meetings which I attended and proceedings which I witnessed. I prepared the minutes in the regular course of my duties as Recording Secretary.

T. H. BENNETT

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I was Recording Secretary of Millmen's Union No. 550, I believe, from December, 1936 until July, 1940, and my duties were to record the proceedings of the meetings of the Union. The entries in the four books marked Exhibits 18, 19, 20 and 21 for

(Testimony of T. H. Bennett.)

identification, between November 1936 and June, 1940, are in my handwriting and constitute the minutes of the meetings of the Union at which I was in attendance. They were prepared in the regular course of my duties.

ALEXANDER WATCHMAN

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell: [164]

I am President of the San Francisco Building Trades Council and have been since 1937. The Building Trades Council is organized under a charter granted by the Building Trades Department of the American Federation of Labor, and includes delegates from all organizations in the building industry, including Millmen's Local No. 42 and all carpenter unions in San Francisco. The organization is governed by by-laws and constitution of the Building Trades Department of the American Federation of Labor and its policy is established by the Building Trades Department of the American Federation of Labor. The officers of San Francisco Building Trades Council are, myself as President, Jason D. Brown, Recording Secretary, John Smith, Secretary-Treasurer, Mr. Galloway, Warden, James

(Testimony of Alexander Watchman.)

Ricketts is the business representative. His duties are laid down by the Council and are to adjust any difficulties that may arise between the various organizations of the Council and the employers. He makes regular oral reports to the delegates of the Council, which are not recorded. As President, I delegate to Mr. Ricketts most of his work; and where an agreement exists between employers and employees, I have instructed Mr. Ricketts to see that they complied with their agreements. That includes agreements and contracts of Local 42, and, all told, 52 local unions. I know that as business agent of Local 42 he would call for the assistance of Mr. Ricketts if the assistance was desired.

Documents marked Exhibit No. 63 for identification are copies of the official minutes of the Building Trades Council, covering various meetings from January, 1936 to June 27, 1940. Exhibit No. 64 for identification is documents of the Council from its files.

Documents marked U. S. Exhibit No. 65 for identification, is an accurate copy of the constitution and by-laws of San Francisco Building and Construction Trades Council taken from the files: [165]

Cross-Examination

By Mr. Tobriner:

I found no original contract or agreement as described in the subpoena, and I do not have such contracts or agreements, or know of their exist-

(Testimony of Alexander Watchman.)

ence. I never gave instructions to Mr. Ricketts to enforce such a contract. The San Francisco Building and Trades Council operates under charter from the American Federation of Labor's Building Trades Department and is governed by their rules, laws and regulations. The District Council of Carpenters operates under the constitution of the United Brotherhood of Carpenters and Joiners of America. Where two or more local unions exist it is mandatory on carpenters to form a district council of their own. The Bay District Council of Carpenters comprises four counties, Marin, Alameda, San Mateo and San Francisco. The Building Trades Council has jurisdiction only over San Francisco. It takes no part in any agreement between employees and employers unless called upon to assist. The Building Trades Council had nothing to do with the contract of Local 42. It is the duty of the local unions of the United Brotherhood of Carpenters to become a part and parcel of the Building Trades Council. The United Brotherhood of Carpenters has a membership of over four hundred thousand, is the second largest organization in the American Federation of Labor, and the President is the First Vice-President of the American Federation of Labor. As President of the local council I am entirely governed by the constitution and by-laws of the Building Trades Department of the American Federation of Labor. The Local constitution was drawn up largely for

(Testimony of Alexander Watchman.)

economy. The constitution in the green book would govern, which is No. 65 for identification. Each local union affiliated with Building Trades Council has local autonomy and can get together with its employers and make an agreement. Building Trades Council does nothing about it, but [166] if they make an agreement it is always the purpose, if possible, to carry that agreement into effect. The constitution sets forth, on page 22, the procedure to be followed by the Building and Trades Council to become a party to such agreement. Such procedure was not taken with respect to the contract or agreement alluded to by Mr. Burdell. I don't recall telling Mr. Ricketts, the business representative, to enforce that contract and did not instruct or authorize Mr. Ricketts to enforce it.

Cross-Examination

By Mr. Rontzohn:

I have been a member of the Building Trades Council so long that I really can't recall. I am a member of the Carpenters Union since 1909. I have always carried a card in the Carpenters Union and been either an officer or a delegate.

“Q. Were you familiar with the by-laws of the Building Trades Council and their trade rules as far back as 1920?”

“Mr. Burdell: I object to that.

“The Court: What is the purpose of it?”

“Mr. Rontzohn: The purpose is to ascertain

(Testimony of Alexander Watchman.)

what ~~the~~ rules were then with regard to what kind of work and so forth. It goes to the very contract in question in this case.

"The Court: Objection sustained.

"Mr. Routzohn: I take it—may I have an exception?

"The Court: Yes, you have an exception to every ruling.

"Mr. Routzohn: All right. May I state into the record what I want to prove?

"The Court: I don't think that is necessary, Judge. If that becomes necessary, you will have an opportunity to develop it later.

"Mr. Routzohn: I thought perhaps—they have asked the witness a number of questions as to his recollection of what took place and what the laws of the carpenters were and what the [167] Building Trades Council were, and I would like to have him tell us, I would like to ask him what the laws were of the Building Trades Council back in 1920 as reflecting upon the question of a conspiracy and what was incorporated in the contract there is here now.

"The Court: That is too remote. I cannot see how it can possibly have any materiality here.

"Mr. Routzohn: Well, if the same provisions—

"The Court: Pardon me. I don't care to hear any more about it.

"Mr. Routzohn: I would like to preserve the record by stating what I would like to prove. I can do it in a very short while.

(Testimony of Alexander Watchman.)

"The Court: You have already stated, it seems to me, sufficient to give me information as to how I should rule.

"Mr. Routzohn: All right, your Honor.

"The Court: You are going back to 1920. You want to show what the rules of the organization were in 1920. I can't possibly see how that has any connection.

"Mr. Routzohn: As refuting the theory of the Government that there was a conspiracy when the very same thing was in the rule book at that time.

"The Court: Let the ruling stand.

"Mr. Routzohn: Mark an exception there, please."

"Mr. Howland: Call Mr. J. G. Ennes as secretary of the Cabinet Manufacturers.

"Mr. Faulkner: May I have that read, your Honor?

(The statement of Mr. Howland was read by the reporter.)

"Mr. Faulkner: I assign as misconduct the action of the Attorney General in calling the name of an indicted defendant as a witness in this case.

"The Court: Is he an indicted defendant? [168]

"Mr. Howland: He is, your Honor.

"Mr. Faulkner: I ask the Court to instruct—

"The Court: You have made your assignment. I am not making any instruction at this time on

it. I will hear the rest of what you have to say.

"Mr. Faulkner: I ask the Court to instruct the jury at this time to disregard the statement of the Attorney General.

"The Court: I heard it. It is in the record. You are calling a man who is a defendant in this case, is that it?

"Mr. Howland: Yes. May I say, your Honor, we are calling him pursuant to a subpoena duces tecum which has been served upon him to produce certain books and papers of the corporation of which he is now an officer and of another association of which he was formerly an officer. We propose to have him produce those records and identify them in his official capacity with relation to, first, the corporation, and, second, the association. If counsel desires to object to this line we are prepared to argue the authorities for calling an indicted defendant for that purpose.

"The Court: Very well. If any other witnesses can be produced here who can give the same testimony, I would suggest that be done and that that witness be brought here.

"Mr. Howland: I may say, your Honor, that we have given a great deal of consideration to this problem and we see no way of getting production of these books and papers, we do not know the identity of any other individuals who could be compelled to produce them.

"The Court: Perhaps Mr. Faulkner would aid you.

"Mr. Faulkner: I assign every word Mr. Howland has said as misconduct, and ask the Court—

"The Court: Just a moment, counsel.

"Mr. Faulkner: Counsel knows he can't call— [169]

"The Court: Just a minute. Read the statement of the Court to Mr. Faulkner:

(Record read.)

"The Court: I just suggested to Mr. Faulkner that perhaps he could suggest a witness to you who could give the information that the Government is seeking and relieve the Court of this situation which has presented itself.

"Mr. Faulkner: Your Honor, I want to cooperate and intended to respond to your Honor. Before I did it, I did not want to forget to assign as misconduct what I considered was misconduct. We have the records of the Commercial Fixture and Store Front Institute. A subpoena was served in the form that it was—

"The Court: I want to know whether or not you are going to produce the records.

"Mr. Faulkner: Yes. We have them in court here.

"The Court: Now, if you wish the benefit of this assignment of misconduct you have made, of course, you have it, because you have made it quite clear.

"Mr. Faulkner: Very well.

"The Court: Your position.

"Mr. Faulkner: Yes.

"The Court: Now, will you produce the witness?

"Mr. Faulkner: Yes, your Honor.

"The Court: Or the evidence.

"Mr. Faulkner: I will not produce the witness.

"The Court: What?

"Mr. Faulkner: I will not produce the witness unless the Court orders the witness to be sworn.

"The Court: Well, no, I don't mean the party whom you object to having sworn. I mean some other party.

"Mr. Faulkner: Your Honor, there was no other party. Every person who would be qualified is an indicted defendant. I [170] will produce the records. They have had the records. In other words, your Honor, you misunderstood my position. They have had these records and they have returned them. They are available to the Government. The Government knows they are available, and that is why I objected to them calling Mr. Ennes as a witness.

"The Court: All right.

"Mr. Faulkner: Mr. Howland knows the records are available.

"The Court: Mr. Howland, will you accept the offer of Mr. Faulkner?

"Mr. Howland: Provided he will produce the records called for by the subpoena and stipulate as to their authenticity.

"Mr. Faulkner: Well, I won't stipulate to the authenticity. I will produce the records of those

companies and everything has been produced and has been in the possession of the Government and it is not right to put a defendant in this position and I can give your Honor some authorities—

“The Court: I thought perhaps we could obviate some argument and some night reading, Mr. Faulkner. I thought perhaps, I might be selfish, but what I was trying to do, I was trying to relieve myself, but if you are going to insist on the proposition, I suppose I will have to direct counsel to furnish me with the points and authorities so I may look at them tonight and rule upon it tomorrow morning.”

“Mr. Faulkner: Very well, your Honor.”

“The Court: The objection of Mr. Faulkner to the swearing of a certain person who is a defendant in the case is over-ruled. The citation that the United States Attorney is guilty of misconduct is without merit. The request that the jury be instructed by the Court in that regard is denied.

“Mr. Faulkner: Exception. [171]

“Mr. Howland: Call Mr. J. G. Ennes, Secretary of the Cabinet Manufacturers Institute, of California, Northern Division.

“Mr. Faulkner: As part of the record, I would like the record to show by stipulation that no subpoena has been served on this witness, and he was called from the body of the court-room by the Attorney General.”

"The Court: Is that so?

"Mr. Howland: A subpoena was served but not in any official capacity. There was a subpoena served on J. G. Ennes.

Mr. Faulkner: You know as a fact he was served in the court-room, and he has been called in this case from the body of the court-room."

"J. G. ENNES

"called for the United States; sworn.

"The Court: As I understand it, this witness has not been sworn ad testificandum, but he is sworn merely for the purpose of identifying some books or documents, is that right?

"Mr. Howland: That is correct. The Government is desirous of having him produce records of this corporation or association, and as I stated yesterday we stand ready and willing to have those documents produced and identified by another witness that the defense is ready, and able to produce instead of this defendant.

"Mr. Faulkner: After the position the Government has taken in swearing the witness, the other is merely a gratuitous statement."

"Mr. Howland: I have not made a statement yet.

"The Court: You may proceed.

"Mr. Faulkner: So that the record may be clear, so that I will not have to interrupt by ob-

(Testimony of J. G. Ennes.)

jection, it is the position of the Attorney General's Office at this time that in addition to asking for documents of the corporation that they propose to ex- [172] amine this witness on something other than the corporation.

"The Court: If that is done you may interpose your objection.

"Mr. Howland: Q. Mr. Ennes, during the period of the active existence of the Cabinet Manufacturers Institute of California, Northern Division, did you have custody and charge of the records and files of that Association?

"A. Yes.

"Mr. Faulkner: Just a minute, I object to that as a direct violation of the rule of the Court, which was that this witness could be called to this stand for the purpose of identifying corporate records.

"The Court: He can state whether or not he has custody.

"Mr. Faulkner: It is not a corporation, your Honor.

"The Court: What is it, an association?

"Mr. Howland: It is an unincorporated association, and it is the position of the Government that that was a person within the meaning of the Sherman Act, as amended by the Clayton Act.

"Mr. Faulkner: My position is that it is clearly indicated by the authorities that I gave your Honor last night and the case cited by the Government

(Testimony of J. G. Ennes.)

is clearly to the effect that a witness can be called in a case to supply the authenticity which would flow from a corporate seal.

"The Court: Objection overruled.

"Mr. Faulkner: Exceptions."

I cannot produce the articles of association and files of the association called for by paragraph 1 of the subpoena. I would say they are not in existence. I cannot produce the minute book referred to in paragraph 2 of the subpoena and would say they are not in existence. I make this statement of my own knowledge. I cannot produce the records and books of the [173] association sufficient to show the names of the members. They are not in existence. I cannot produce the books and records of the association to show all sources and items of income. They are not in existence. I cannot produce any powers of attorney or other written authorizations to the association to do any of the acts set forth in paragraph 5 of the subpoena. Such records are not in existence. I cannot produce contracts or agreements proposed or executed between said association and any of the associations and individuals set forth in paragraph 6 of the subpoena. Such records are not in existence. I cannot produce any correspondence or communications referred to in paragraph 7 of the subpoena. Would say they are not in existence. I cannot produce any minute book or paper relating to joint meetings referred to in paragraph 8

(Testimony of J. G. Ennes.)

of the subpoena. Such records are not in existence.

I am Secretary of the Commercial Fixture and Store Front Institute and have charge and custody of its files, books and records.

U. S. Exhibit No. 67 for identification contains the minutes, by-laws and signatures of the members of Commercial Fixture and Store Front Institute. I thought the articles of incorporation were there. I don't know where they are. The minute books describing meetings of stockholders and directors are in the book already marked.

U. S. Exhibit No. 68 for identification (photostatic copy used by stipulation) are accounts of Commercial Fixture and Store Front Institute and are original books of entry made in the regular course of business. There are not in existence any powers of attorney or other written authorizations as described in paragraph 14 of the subpoena.

U. S. Exhibit No. 69 for identification is a photostatic copy of employer and employee agreement on wages and hours and working conditions re Mill and Cabinet work, with the Commercial [174] Fixture and Store Front Institute and is a part of its records. That is all the contracts or agreements I have, called for by paragraph 15 of the subpoena. There are no letters such as referred to in paragraph 16 of the subpoena in existence.

Book marked Exhibit 70 for identification is a part of the records of Commercial Fixture and

(Testimony of J. G. Ennes.)

Store Front Institute and is the neostyled copy of arbitration proceedings in connection with a labor proceeding. Commercial Fixture and Store Front Institute was not a party to the proceedings. When I became secretary I brought it along with me.

The four envelopes marked Exhibit 71 for identification contain cancelled checks of Commercial Fixture and Store Front Institute, covering disbursements recorded in the ledger sheets, made by the corporation in due course of business.

U. S. Exhibit No. 72 for identification is bank deposit book of Commercial Fixture and Store Front Institute. I have not the predecessor book. Exhibit No. 73 for identification is an agreement between Cabinet Manufacturers Institute of California, Northern Division, and Bay Counties District Council of Carpenters, and is a record I carried with me when I became secretary of Commercial Fixture and Store Front Institute, and is now a part of its records.

Thereupon, through Mr. Bacigalupi, attorney for defendant, Mangrum, Holbrook & Elkus, Exhibits Nos. 74 to 80 were identified as envelopes consisting of original checks and payroll sheets through the period covered by the subpoena.

JOHN G. MILLER

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland: [175]

I am office manager of Mullen Manufacturing Company and have been for approximately fifteen years, and as such have custody and access to the books and records of the company. I am here pursuant to subpoena duces tecum served upon the company. I have a copy of the subpoena with me. No power of attorney or other written authorization can be found, such as are called for by paragraph 4 of the subpoena. We have no contracts or agreements between organizations and the Mullen Manufacturing Company directly, as referred to in paragraph 5 of the subpoena.

Sheets marked for identification No. 81 are bills for dues from Cabinet Manufacturers Association to Mullen Manufacturing Company, and were received by the company in due course of business. Sheets for identification Exhibit No. 82 are various matters of correspondence in the files, as communications between the various cited parties and Mullen Manufacturing Company. I don't think they were written by myself. Papers purporting to be original letters received were received in due course of business. Sheets which purport to be carbon copies of outgoing letters were sent in due course of business.

Paper marked Exhibit No. 83 purports to be a

(Testimony of John G. Miller.)

copy of an agreement between United Brotherhood of Carpenters and Joiners and various manufacturers in regard to wages, hours and labor conditions. I am not able to tell how it came into the possession of my company. It was given to me to keep as a record and be available for reference when required. I have been requested by executive officers to produce the paper for inspection and use. I used it myself and it was continually in use. There were subsequent papers. One is marked on the back in my pencil handwriting as being valid up to a certain time. I referred to this paper from time to time for the purpose—well, here is a question—for the purpose of the apprentice scale.

Sheets marked U. S. Exhibits No. 84 for identification [176] are accounts payable — transfers from the journal—sheets from the general ledger book—made in the regular course of business.

Five books marked U. S. Exhibits Nos. 85 to 89 constitute the original weekly payroll records, personally prepared by me. I only used so much of the contents of the paper marked 83 as a reference is concerned. It is part of my duty to know what a man gets. I don't know whether Exhibit 83 has been modified or not. The rate is so uniform between union men and employers that, except in a case of apprentice, there is no necessity for reference. There is a schedule that applies to all journeymen in certain vocations, and the

(Testimony of John G. Miller.)

books are divided into vocations and there is no necessity to refer to that, as it is part of our daily routine. The purpose of the dates set out on the paper would be to show a change of audit, rate of pay. I don't see any date on this to find out when these rates went into effect. It says this agreement is entered into, etc., and minimum wage scales shall be so much. This was modified by some other proceeding which I believe we had copy of. We received from all sorts of sources that the wage scale is \$8.50 for one vocation and \$11 for another. That is general information known as well as we know that noon is noon. Lately we have advanced carpenters from \$10 to \$11. I have seen no agreement although it is in force. The date of the paper is May 1, 1939 to May 1, 1940. I first started using the paper for the purpose described, approximately the first of 1939. The pencil notation on the back of the paper was made when one of the officials of the labor union called and said that is the thing we are working under, and I put the memorandum date 2-20-41 to show it was in effect, for my own satisfaction. Date of notice was then corrected by counsel to show 2-14-40 and then 2-20-41.

I do not have in the file a paper of the same general nature to which reference was made prior to this paper. Papers [177] that were previous to that I think I destroyed. I think I had a paper similar to this for the purpose of ascertain-

(Testimony of John G. Miller.)

ing the scale posted to payroll. I think those papers have come to us at intervals through a number of years. I could not say whether I got such a paper during the closing months of the year 1936. There have been from time to time similar papers used for posting the payroll.

I meant by saying that there was no "direct" contract, I put in the word "direct" because I don't know whether you would come back and tell me, "Here is one," because we recognize it in our payroll set-up, and that is a copy of some sort of a contract.

Cross-Examination

By Mr. Faulkner:

I have produced the sheets from the ledger, under paragraph 7 of the subpoena wherein I was requested to bring disbursement books, ledgers and records showing monetary disbursements. I have no record of any disbursements to Lumber Products Association or any officer or agent thereof, nor Wood Products, Inc. or any officer, or East Bay Mill Owners Association or any officer.

"Q. J. G. Ennes, Oscar H. Ostlund, John Mullen—you have disbursements for Mr. Mullen, but other than Mr. Mullen, J. G. Ennes, and Leo Roselyn, did you make any disbursements to any of those men?"

"A. You are speaking of those men, personally?"

"Q. Yes. A. None."

(Testimony of John G. Miller.)

Redirect Examination

By Mr. Howland:

Ledger sheets marked 74 contain records of payments to Cabinet Manufacturers Association and to Commercial Fixtures.

EDITH FINCH

called as a witness in behalf of plaintiff, was duly sworn and testified as follows: [178]

Direct Examination

By Mr. Howland:

I am bookkeeper of L. and E. Emanuel, Inc. I have been for not quite two years, and have the custody and control of the books and records of the Company. I have no powers of attorney or other written authorizations such as are called for in paragraph 4 of the subpoena. I don't know whether such records are in existence. I have made or caused to be made a search of the files for the purpose of producing all the records that are called for by the subpoena. I have no contracts or agreements made by the company which are called for by paragraph 5. There are no such contracts in existence. The only correspondence we have, called for by the subpoena, is with Cabinet Manufacturers and with the Council of Carpenters.

(Testimony of Edith Finch.)

Folders marked U. S. Exhibits Nos. 90, 91, 92 and 93 are records of the Company consisting of correspondence with Cabinet Manufacturers and Council of Carpenters. Papers purporting to be original letters received by the Company are letters received in due course of business. Papers purporting to be carbon copies of outgoing letters were actually sent by the Company in due course of business.

Folders marked U. S. Exhibits Nos. 94, 95 and 96 are letters received by us from the District Council of Carpenters. U. S. Exhibit No. 97 for identification contains entries in the regular course of business and shows accounts payable with the Commercial Fixture and Store Front Institute. The first entry was made March 1, 1938. I have no record of any payment made prior to that time. I have no minutes or papers relating to joint meetings as called for in paragraph 8 of the subpoena.

Exhibit No. 98 for identification contains the regular payroll record for the period the book purports to cover and the entries were made in the regular course of business. Bundle of [179] papers marked U. S. Exhibit No. 99 for identification are copies of indifical records of every man who has worked for us. Original payroll records have been destroyed until 1939. We got the Social Security to reinstate that record as far as we could.

(Testimony of Edith Finch.)

Cross-Examination

By Mr. Faulkner:

I did not read the contents of the various folders. The papers were received in the regular course of business and went into the bundles, whatever it may be. Payroll record is non-existent.

“Mr. Faulkner: You say the payroll record is nonexistent for what period, Miss Finch?

A. June, 1939, it starts, and it goes to 1940.

Q. Is that record reestablished—

A. Yes.

Q. —by these? A. Yes.”

LEE MOFFETT

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am a lumber inspector for Western Pine Association. I have been with Western Pine about seven and a half years. About four and a half of that have been spent as an inspector and about three years as promotional field representative, which took me through many States. Western Pine Association is a non-profit organization maintained by the pine sawmills in the Western States. Business of the members of the association mainly is the production of lumber, manufacture of pine

(Testimony of Lee Moffett.)

lumber. Most of them produce millwork. I was located in San Francisco as promotional representative for the association from about July, 1937 until April, 1938. As field representative in the promotion department my duties called for an exhibit at various home shows and we built [180] a model home at the Exposition. I also called on architects and local millwork houses and retail yards and school boards, anyone connected with the use of lumber in the Northern California district. From time to time I received specific instructions from our home office in Portland to look into certain things that might be of interest to our industry. Our main interest was the use of wood and pine in particular and, of course, we were more or less interested in various restrictions against the use of our product. I tried to and did follow my instructions as closely as possible.

I know Mr. D. N. Edwards. I met him twice, I believe. I met him first in Oakland, as I recall it, in September, 1937, and had a conversation with him at that time.

"Mr. Routzolin: We object, your Honor, as incompetent.

"Mr. Burdell: Mr. Edwards is a defendant, your Honor.

"Q. Did you have a conversation with Mr. Edwards at that time?

"A. Yes, I did.

"Q. What was the subject matter of the conversation?

(Testimony of Lee Moffett.)

“Mr. Routzohn: We object, if your Honor please—

“The Court: Overruled.

“Mr. Routzohn: In the first place, that calls for a conclusion; what was the subject matter.

“The Court: What was said between you?

“Mr. Routzohn: We object to that.

“The Court? Overruled.

“Mr. Faulkner: My objection is more than that stated by Judge Routzohn. We object on the ground it is incompetent, irrelevant and immaterial, and not binding upon the defendant here on trial, and no foundation laid, in this, that there is no evidence in this case that a conspiracy of any kind, character or description existed between the witness on the stand and any defendant in this case, nor is there any showing of any nature [181] in this case that the relation of Mr. Edwards was such that a conversation with this witness could be introduced other than hearsay as to these defendants.

“The Court: Does anybody wish to add anything?

“Mr. Tobriner: I wish to object on the further ground that there is no statement of the place where the conversation occurred, the time, or the parties present.

“The Court: Any further objections from anybody? Overruled.

“Mr. Faulkner: Exception. Your Honor, I presume—

(Testimony of Lee Moffett.)

"The Court: It goes to all the defendants, it is understood.

"Mr. Faulkner: Yes.

"The Court: It was understood in the beginning. It is still the understanding, isn't it?

"Mr. Routzohn: I presume so, your Honor."

We discussed the use and distribution of lumber in the Bay area. I introduced myself as a representative of the Western Pine. Mr. Edwards took me through his plant and showed me his operations—his various machines. During that trip around the plant, he described his operations and brought up the subject of competition from the sawmills in regard to his business. He was manager of the Oakland Planing Mill at that time and he brought up the competition and he was more or less antagonistic toward the fact that sawmills were shipping lumber into the Bay area. I don't recall the exact words. I couldn't repeat exactly what he said, because that happened some time ago, but I recall the substance to a certain extent. The subject was the discussion of competition between the Bay district planing mills and sawmills in the Northwest.

"Q. What did Mr. Edwards say about that?

"Mr. Routzohn: We object on the ground that it is [182] incompetent, irrelevant and immaterial what he may have said about competition.

"The Court: Overruled.

"Mr. Routzohn: From the sawmills in the Northwest.

(Testimony of Lee Moffett.)

"The Court: Overruled.

"Mr. Routzohn: We object because it is not binding on any of our defendants unless a conspiracy is shown and there has been no conspiracy shown.

"The Court: A conspiracy will have to be shown or it won't be binding on anybody.

"Mr. Burdell: It is offered subject to that connection, your Honor.

"The Court: I understand that. Have you fully answered the question? Read the question."

He said he was opposed to the sawmills shipping certain items into the Bay area. I didn't say very much of anything, because I was listening. I recall just the substance of his statement. I couldn't repeat words, but at that time his plant was rather quiet and we mentioned that, and he said that that was the reason that there was slack business in the Bay district, because the sawmills were shipping lumber in here in competition such that they could not compete with it locally. At that meeting that seems about all that was discussed.

I met Mr. Edwards again a week or two later in the Ray Building in Oakland. Besides us, there was one other gentleman there. I believe he was secretary of the Retail Dealers' Association. I met Mr. Edwards in this gentleman's office.

"Q. What was said at that meeting, Mr. Moffett, by you and by Mr. Edwards in substance?

"Mr. Faulkner: The same objection, your Honor, as to the last conversation.

(Testimony of Lee Moffett.)

"The Court: Overruled." [183]

Mr. Edwards took me into his private office and we talked a while, and he explained the reason for having this office as well as an office at his place of business which was the Oakland Planing Mill, and he told me the reason he maintained this office in the Ray Building was it was a place to negotiate with the various unions and their officials, and maintain relations with his association of Millwork Operators. He told me the nature of these negotiations that they had this association of Millwork Operators and were in a position to negotiate with the unions and receive certain concessions in return for their promise of obtaining more work for the local millmen; that by excluding certain items of lumber from the sawmills they would be in a position to hire more men in the Bay district, and the object of his office in the building was to control these various restrictions and to contact and negotiate with the union officials. He said that it had been quite successful and that he expected in a short time they would be able to extend these restrictions to cover all items of millwork, also surfaced lumber and molding, knotty pine paneling and items of that nature, would not—other items are excluded from coming into the Bay district from the sawmills. By sawmills, I mean those plants located in the various Western States that log and saw it into lumber and eventually ship it as a finished product. They do not only handle

(Testimony of Lee Moffett.)

rough lumber, many are equipped to ship the finished product, such as finished boards and moldings and millwork, doors and windows, knotty pine paneling,—all items of the finished product ready to be used by the carpenter. These visits were just

in connection with a small part of my duties. After my conversation with Mr. Edwards, I visited a number of lumber yards and mills in Oakland or San Francisco, and observed lumber or millwork.

“Q. Did you observe any lumber or millwork at any of them? A. Yes.

“Q. Tell the jury what you observed. [184]

“Mr. Routzohn: I object, if the Court please, for the reason it is not competent, it is not material and it is irrelevant and has no bearing whatsoever on this case.

“The Court: Overruled.

“Mr. Faulkner: On the further ground that the acts and conduct of this witness is hearsay as to the defendants and not binding upon them.

“The Court: Overruled.

“A. Well, my contacts were mainly with lumber yards and millwork houses, it was just to discuss various phases of the lumber industry.

“Mr. Routzohn: We ask that go out.

“The Court: That may go out. Read the question.

“Mr. Burdell: Q. Tell the jury what you observed, Mr. Moffett.

A. Well, that is mainly what I did observe

(Testimony of Lee Moffett.)

around the lumber yards, was the lumber products of the various types of millwork and lumber.

"Q. Did you see lumber stacked at any of the yards or at any particular yard?

"Mr. Faulkner: Same objection.

"The Court: Overruled.

"A. Stacked? I don't quite get the question, 'stacked.' "

"Mr. Burdell: Q. Did you see any lumber with any signs upon it at any yard?

"Mr. Routzohn: We object as leading.

"The Court: Overruled. It is leading. Overruled.

"The Witness: You mean from the sawmills, lumber from the——

"Mr. Burdell: Q. At what yard, Mr. Moffett?

"Mr. Routzohn: Your Honor, in answering if he is telling——

"The Court: Well, if you will keep still with your [185] objections, perhaps we will be able to get started in the answering of the question. If there are any objections you have to make now, if you will all make them one after the other and we may have a stipulation——

"Mr. Faulkner: We haven't repeated objections. We have merely added to it.

"The Court: Of course, if you do not wish to do that, I presume you can make them from time to time. Read the question, please.

(Question read.)

(Testimony of Lee Moffett.)

"A. Yes, I observed some lumber with signs.

"The Court: Well, tell the jury what you saw.

You said you saw lumber with signs.

"A. Yes, I saw some lumber bearing various signs, some lumber that I recall in part had a sign of 'Hot Cargo' on it. It was a boxcar full of lumber from one of our mills in the Northwest and had been shipped in here and unloading had been delayed because of the sign attached to it. I also saw 'Hot Cargo' on it. The lumber remained there for some time before it was unloaded.

"Mr. Routzohn: We ask the latter part of the answer be stricken out, your Honor.

"The Court: Denied.

"Mr. Routzohn: As being a conclusion.

"The Court: Denied."

I examined the car and determined it contained largely what is known as shop lumber which is used in the manufacture of doors and windows. It is not a completed product. It is a surfaced board used to manufacture these items of millwork. Probably 90 per cent of the car contained that type of lumber, possibly 10 per cent contained the manufactured items of moldings. These moldings were placed in the car on top of the shop lumber and that was the cause of the objection. It was the inclusion [186] in this car of the manufactured molding lumber. I looked at the lumber and it did not have a union label on any of it. I re-

(Testimony of Lee Moffett.)

turned to the yard possibly three weeks later to determine whether or not the lumber had been moved. I didn't return again. The last time I saw it it was still unloaded. I saw it twice,—the sign was on it both times. The inside of the car remained in the same condition as it was in the first time I saw it.

Cross-Examination

By Mr. Routzohn:

I have no permanent address because I am on the road all the time for the Association. I spent approximately eight and one-half months in the last several years in this portion of the State of California. Part time in San Francisco. I have not resided in San Francisco since 1937, except a day now and then when I come on regular work. Perhaps four months out of the eight and one-half months of 1937 was spent in San Francisco. When I complete my testimony I will proceed to LaGrande, Oregon, to continue my regular work of visiting mills. I visit all the pinemills, which requires about a year's time. Part of the time I will spend in the East as an inspector of lumber on the Atlantic Coast. There are approximately 140 mills represented by Western Pine Association. I do not have a list of them but could probably obtain it in two hours' time. I think I could obtain one at one of the member's mills office in San Francisco. The name of the lumber yard where I saw a car marked "Hot Cargo" as I recall

(Testimony of Lee Moffett.)

was Engstrom Lumber Company, in Oakland. I do not recall the street address. I saw it some time in the fall of 1937, probably in the latter part of September or the first of October. I saw the particular car very close to the time of the conversations in September of 1937. I understood by the term "Hot Cargo" that it could not be unloaded because it did not come from a member mill which did not carry a union label. It had the words "HOT CARGO." I understood [187] by the word "HOT CARGO" marked on that car, that the shipment came from some mill that did not bear the Union Label of the United Brotherhood of Carpenters and Joiners of America. I don't know definitely what mill it came from. It was none of my business. Possibly, it was one of our mills. Most are members of the Western Pine Association. I had no way of finding out either the consignee or consignor, and made no attempt to ascertain. I did not get involved in anything that really was not any of my business. At that time I do not believe that any of the sawmills belonged to either union. I mean that they neither belonged to the C. I. O. or A. F. of L. Carpenters and Joiners of America. I mean they had not been organized yet as far as those two labor organizations are concerned. Possibly, this mill had a company union. Some of the mills have their own union. I don't know whether this lumber was shipped from a mill that had a company union. I did not

(Testimony of Lee Moffett.)

ascertain why that was designated "Hot Cargo," other than my own knowledge that it was non-union material. The car was on the siding right near the planing mill of the Engström Lumber Company. It was either October or September, 1937. I did not communicate with the mill that shipped the particular car. I went back three weeks later, because my duties as a representative for the association called for my travelling from one yard to another. Finding something like that did not impress itself upon me sufficiently to make a notation and then take some action of my own in connection with it.

Cross-Examination

By Mr. Faulkner:

My visit to certain lumber yards and mills in Alameda County was in 1937 and part of 1938. There are many mills in this territory, I cannot recall many of them I visited, because that was some time ago and I have been many places since then and visited many mills. I recall the E. K. Wood Lumber Company, [188] Tilden Lumber Company, Pacific Manufacturing Company. They have a plant in Oakland, a distributing department. Hogan, Oakland Planing Mill, Zenith Lumber and Mill works. That is about all that I recall the names of at the present time. I visited certain lumber yards and planing mills in San Francisco during the same period, from July, 1937 to April,

?

(Testimony of Lee Moffett.)

1938. I visited in San Francisco the Eureka Planing Mill, the Acme and the Brannan Street Planing Mill—that is about all I can recall.

Redirect Examination

By Mr. Burdell:

I recall visiting the Pyramid Lumber Company and Oakland Planing Mill, in Oakland.

Mr. Moffett was thereupon excused to return with the list referred to in his testimony.

ARTHUR W. BRAAS

recalled for the plaintiff.

Direct Examination

By Mr. Howland:

In addition to the records already produced, book marked for identification 100 is original payroll record containing the entries made in the regular course of business, showing weekly hours worked and amount of wages. Book marked 101 for identification is the same thing for 1940 up to date, 1941, beginning where Exhibit No. 100 leaves off. The two form a continuous record, and the entries in 101 were likewise made in the regular course of business.

CHARLES R. GURNEY

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I hold the office of Secretary-Treasurer in Alameda [189] County Building & Construction Trades Council. I have held that office approximately 25 years and have custody and charge of the books and records of the Council. U. S. Exhibit No. 102 for identification is a copy of the charter of the Council. Booklet marked Exhibit No. 103 for identification is the constitution and by-laws. U. S. Exhibit No. 104 for identification is a true and accurate mimeographed copy of the minutes prepared by me in the regular course of my duties, recording proceedings and occurrences I have witnessed. There are no contracts referred to in paragraph 3 of the subpoena. U. S. Exhibit No. 105 for identification is a communication from Millmen's Union No. 550 received by the Council. Folders marked 106 and 107 contain minutes of the San Francisco Building & Construction Trades Council, received by us, weekly. I have no letters of San Francisco Building Trades Council coming within the scope of the subpoena.

Charles Roe is assistant business agent of the Council and has occupied that office approximately three years. J. C. Reynolds is business agent.

"Mr. Todd: I believe we have the benefit of the objections made by previous defendants, so it will

(Testimony of Charles R. Gurney.)

not be necessary for me to repeat them, your Honor?

"The Court: Yes."

I am familiar with Mr. Roe's duties. He is part representative of Hayward Union of Carpenters and also assists Mr. Reynolds, business agent of the Council. Mr. Reynolds, the business agent, takes care of all the business of the Council, probably would have to interview contractors pertaining to future contracts. If there is any trouble over jurisdictional dispute he is sent by the Council to try and adjust the difference. He is authorized to participate in negotiations of any labor contract, if he is instructed by the Council. I could not recall any particular job the business agent has ever been so instructed. The last job [190] I can recall would be the Naval Air Base at Alameda, in which the contractor desired to meet the representative, relative to supplying labor. I don't know whether Mr. Roe has ever been instructed to assist the business agent and other officers of the local unions in the execution and performance of labor contracts. I couldn't say whether he has cooperated with and assisted those persons with respect to execution and performance of contracts.

LOUIS D. WINE

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I am special agent for the Federal Bureau of Investigation and have acted as such approximately 17 years. I have been assigned to San Francisco field office approximately 4 years. I know J. Gordon Ennes. I believe he is sitting at the counsel table. I met him on or about April 6, 1940, in his office at 74 New Montgomery Street, San Francisco. Just he and I were present. We had a conversation. He told me he was secretary of Commercial Store Front and Fixture—Commercial Fixture and Store Front Institute.

The following evidence was offered against, and limited to, defendants Ennes and Commercial Fixture and Store Front Institute:

He told me he was secretary and manager. There were approximately 12 members, and he was bargaining agent with the union.

“A. I approached Mr. Ennes, introducing myself to him as a special agent of the Federal Bureau of Investigation. I presented my commission card, explained it to him, told him I was making an investigation of the millwork industry on behalf of the Government. I asked him about the Institute and asked him the number [191] of members. I asked him if he would give me a list of the membership.

(Testimony of Louis D. Wine.)

He said he hadn't that list available, but would mail it to me later. I asked him about a contract that was entered into on which his name appeared, and he had several contracts, and produced the contract, the 1938 contract, which was signed by him and a number of others. I showed him his signature on the contract. He identified it, admitted he had signed that. I asked him further about the clause in the contract relating to restrictive and permissible millwork in the San Francisco area. He said he didn't know of the existence of such a clause in the contract. I asked him if he had read the contract before he had signed it. He said, 'Not entirely.' I asked him if he knew if there was any agreement to restrict millwork coming into the San Francisco area. He said, 'No, not directly, only by hearsay and rumor.' I asked him what information he had. He said, 'Rumors and hearsay are not valuable.' I asked him if he knew the contents of the contract when he signed. He said only partially, he did not read it entirely. He said he was representing the Store Front Institute, the Company of which he was secretary at the time he signed this contract."

He explained his duties were to negotiate contracts of the Association and appear in negotiations with the Millmen's Unions and the Association. He attended numerous conferences between union groups as representative of the Association. He said the Institute was a California corporation com-

(Testimony of Louis D. Wine.)

posed of approximately 12 members. I left my name and address with him and subsequently received a list of the members through the mail.

U. S. Exhibit No. 108 was the letter so received and was thereupon introduced in evidence and read to the jury.

"Mr. Zirpoli: The letter is on the letterhead of Commercial Fixture and Store Front Institute, Inc., 74 New Montgomery Street, San Francisco, California; Telephone Exbrook [192] 6572.

"April 10, 1940:

"Federal Bureau of Investigation,
111 Sutter Street
San Francisco, California.

"Gentlemen:— Att: Mr. Wine

"Complying with your request, the members of this organization are:

Wm. Bateman, 1915 Bryant Street, San Francisco

Braas & Kuhn Co., 1917 Bryant Street, San Francisco

L. & E. Emanuel Inc., 2665 Jones Street, San Francisco

Exposition Woodworking Co., 661 Golden Gate Ave., San Francisco

The Fink & Schindler Co., 552 Brannan St., San Francisco

Ful-Vue Fixture Co., 75 Oak Grove, San Francisco

S. Kulcher & Co., 731 E. 10th St., Oakland

(Testimony of Louis D. Wipe.)

Mangrum, Holbrook & Elkus, Golden Gate Ave.

& Hyde Streets, San Francisco

Mullen Mfg. Co., 64 Rausch St., San Francisco

Ostlund & Johnson, 1901 Bryant St., San Francisco

H. Schultze & Son, 49 Rodgers St., San Francisco

Unit Bilt Fix. Co., 243 7th St., San Francisco

"The Commercial Fixture and Store Front Institute is incorporated—January 17, 1939, State of California. The officers are:

"Mr. John Mullen, Director and President

Mr. Oscar Ostlund, Director and Treasurer

Mr. J. G. Ennes, Director and Secretary Manager.

Yours very truly,

COMMERCIAL FIXTURE AND
STORE FRONT INSTITUTE

Signed By: J. G. ENNES

"JGE:RP" Manager" [193]

Stamp Federal Bureau of Investigation April 10, 1940, indicates date letter was received in my office.

I know John Mullen. I first met him at his office at his place of business, at 72 Rausch Street, San Francisco, on or about April 6, 1940. This was following my meeting with Mr. Ennes and just he and I were in his office. The following conversation was then limited to defendants, Mr. Mullen, Mullen Manufacturing Company and Commercial Fixture and Store Front Institute:

(Testimony of Louis D. Wine.)

He told me he was president of Commercial Fixture and Store Front Institute; that Mr. Ennes was secretary and handled matters of negotiations and was actively representing the Association which was composed of men in lines of business similar to his own. That he had been in business for many years in San Francisco; employed approximately 65 members of the millmen's unions; that he was engaged in making cabinets and store fronts; had a substantial contract with the Woolworth Company and grossed \$200,000 a year from that contract; that he made a very small profit and the last year or so his overhead increased approximately 10 per cent. He stated he had a union steward who mildly objected to him using millwork; that he received most of his millwork from North Carolina, hardwood, things like that; that he had his own sticker machines and made most of his patterned lumber in the plant; that he felt if the unions made further demands for increase in salary, it would be necessary for him to discontinue business, as he couldn't run at a profit; that he felt Woolworth Company would take away his contract. He said he knew there was an agreement in San Francisco between the millmen and the association to keep out of the San Francisco area lumber that was not made in accordance with the current union wage scale.

He asked me about the investigation I was conducting and I told him it was in connection with Federal Antitrust Laws. He said he *will* entirely

(Testimony of Louis D. Wine.)

in favor of the Government's investigation; [194] he hoped they pursued it vigorously and that the Government would complete these Antitrust cases and clear up the position between the unions and association of employers. I mentioned to him there were Federal statutes on restraint of trade and he hoped there would be no restraint of trade; that the product would be permitted to freely come into San Francisco without restraint. With relation to the activities of the Institute and the agreement with relation to restraint of trade, the only thing I recall he said he knew there was such an agreement. It was a verbal agreement. At the time I spoke to him I do not recall he said anything about the unions in restraint of trade. He said there was difficulty in getting lumber into San Francisco Bay area that had been milled outside of that area.

With reference to the minute book marked Exhibit 67, being the minutes and by-laws of Commercial Fixture and Store Front Institute, it was stipulated that the signatures which appear at the end of the by-laws are authentic signatures and that the persons on there are members of the corporation Commercial Institute, and such exhibit was received in evidence against defendants Commercial Fixture and Store Front Institute, J. G. Ennes, John E. Mullen, Braas & Kuhn, Fink & Schindler, Ostlund and Johnson, Charles F. Stauffacher, Leo Roselyn and Joseph J. Schmidt, pursuant to understanding that all that is deemed in evidence is what plaintiff

(Testimony of Louis D. Wine.)

reads and defendants may read from the same book, but only what is read to the jury is deemed in evidence.

Thereupon Mr. Zirpoli read from the exhibit minutes of the first directors' meeting of January 19, 1939, wherein it was resolved that members of Cabinet Manufacturers Institute who may desire to accept membership in the corporation are elected as members in the classification they now hold in Cabinet Manufacturers Institute, Northern Division; that the dues continue the [195] same. John Mullen was elected Director and President, and Oscar Ostlund was elected Director and Treasurer, in the place of Melbert B. Adams.

It was stipulated that the Oscar Ostlund name was a defendant and that the signature of J. G. Ennes, Secretary, was authentic.

Thereupon, Mr. Zirpoli read from Art. VI, section 2, 3 and 4 of the By-Laws, as follows:

"Sec. 2. President—The President, or in his absence or disability from any cause the Treasurer, shall preside over all meetings of members and directors and shall have the casting vote. Unless otherwise determined by the Board, he shall sign all contracts entered into on account of the corporation and shall do, perform and render such acts and services as the Board of Directors shall prescribe and require and as are usually done, performed and rendered by the president of a corporation. In his absence or disability from any cause the Treasurer shall act in his stead.

(Testimony of Louis D. Wine.)

“Sec. 3. Secretary-Manager—The Secretary-Manager shall be the custodian of the seal of the corporation and affix the same to all papers, instruments and documents requiring such seal; he shall keep the minutes and records of the corporation and such books as are prescribed by the statutes of this state to be kept or which may be required by the Board of Directors. In addition to the services usually and ordinarily performed by the secretary of a corporation, he shall act as general manager, and subject to the control and supervision of the Board of Directors shall conduct and manage the affairs of the corporation and act as the authorized representative of the Institute in its dealings with other groups or the individuals thereof.

“Sec. 4. Treasurer—The Treasurer shall perform such duties as are imposed by law and as may be required by the Board [196] of Directors. He shall receive and keep all the funds of the corporation, depositing and withdrawing them in such manner as may be determined by the Board of Directors; and at each annual meeting of the members he shall submit for their information a complete statement of his accounts for the preceding year with the proper vouchers. In addition to his other duties, the Treasurer shall perform such duties and have such powers as are ordinarily performed by the vice-president of a corporation and shall be invested with like powers.”

“Then at the very last page of this minute book

(Testimony of Louis D. Wine.)

containing any written data appears the following:

“The undersigned hereby accept membership in Commercial Fixture and Store Front Institute and promise and agree that so long as they remain members of the corporation they will abide by all the laws, rules and regulations regularly adopted; and that in the conduct of their business they will conform to, and will maintain and support, all labor agreements of every sort and kind in which Commercial Fixture and Store Front Institute is one of the contracting parties.’ ”

Thereafter followed the signatures of Mullen Manufacturing Co., J. E. Mullen, Pres., Ostlund & Johnson, by Jos. Kuhn, Fink and Schindler Co., E. F. Stauffacher, President, H. Schulte & Son, by H. Schulte, Jr., Leo Roselyn, d. b. a. Unit-Bilt Fixture Co., Ful-View Fixture Co., J. J. Schnidt, L. & E. Emanuel, Inc., by A. S. MacRae.

It is stipulated that the person who signed for L. & E. Emanuel Company was a representative of that company. The exhibit was then offered as to L. & E. Emanuel Company

(Testimony of Louis Wine resuming.)

I also visited Harry W. Gaetjen, one of the defendants named in the indictment, in his office, 3196 24th Avenue, on or about March 25, 1940. Beside Mr. Gaetjen Mr. Carl Sherman, [197] Special Agent of the Federal Bureau of Investigation, and myself were present. Mr. Gaetjen told me he was at that

(Testimony of Louis D. Wine.)

time inspector of the Lumber Products Association of approximately 14 members. The meeting was in the office of this association. A meeting took place on or about the 26th day of March of that year in that office. I attended with Mr. Sherman at the request of Mr. Gaetjen. A number of persons attended whose identity I did not know. Mr. Gaetjen was at the meeting. I don't remember definitely if Mr. Spencer was there. It was a meeting in the office of the Lumber [198] Products Association. Approximately 18 were in attendance. Mr. Gaetjen addressed the meeting.

"Mr. Zirpoli: I am now offering this as to all defendants in the case.

"Mr. Faulkner: We object to anything that happened at that meeting as hearsay, immaterial, irrelevant, and incompetent, and no showing that that is an act or declaration pursuant to or in furtherance of the conspiracy, a meeting of indicted defendants who are not before the Court, in the presence of two Department of Justice Agents investigating a case, and comes within the rule that acts or declarations of a person to be binding on a co-defendant must be acts or declarations pursuant to and in furtherance of a common design or conspiracy, an act or declaration of a lot of men in the presence of Department of Justice Agents could not come within that category.

"Mr. Zirpoli: We will connect this up and show that it was a part and parcel of the conspiracy and in furtherance thereof.

(Testimony of Louis D. Wine.)

"The Court: Overruled.

"Mr. Zirpoli: Q. You have told this was a meeting at the Lumber Products Association.

A. Yes.

Q. You attended this meeting and Mr. Sherman was present also? A. Yes.

Q. Will you tell us what Mr. Gaetjen said at this time, as you recall it?

"Mr. Faulkner: The same objection.

"The Court: Yes, overruled.

A. Mr. Gaetjen said the meeting was called for the purpose of discussing a demand or request made by the Millmen's Union for an increase of salary, that they were asking for \$9 a day and a 7-hour day. Mr. Gaetjen went on and stated that there was a verbal agreement between the Millmen and the Association to exclude from the San Francisco Bay area millwork that had not [199] been in accordance with the current wage scale, and he thought that the unions had not lived up to their part of the agreement, and he also brought out in his exact words, the purpose of the agreement was to create a sort of a Chinese Wall around the San Francisco Bay area, but the unions had not been vigilant in keeping this lumber out, and he thought they would not be entitled to any increase in salary, and Mr. Gaetjen stated 'We are not in a position to pay them additional wages.'

"Mr. Faulkner: I ask the Court at this time to limit that testimony in such a manner that it cannot bind any employers or any person in court.

(Testimony of Louis D. Wine.)

"The Court: I will limit it subject to connecting it up.

"Mr. Zirpoli: I expect to connect it up.

"The Court: If it is not connected up it is subject to a motion to strike. Go ahead."

I also had a conversation with the defendant, Walter C. O'Leary, about March 22, 1940 in a room of the A. F. of L., in Oakland. Just Mr. O'Leary and myself were present. I called him on the telephone, told him I was a special agent of the Federal Bureau of Investigation, and would like to make an appointment with him. He agreed to meet me at the A. F. of L. Building about March 22, 1940. I met him there in an empty room and we sat down and talked, and I told him I was making an investigation.

The following conversation was offered against defendants O'Leary and United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550:

"A. Mr. O'Leary told me he was Business Agent for Millmen's Union 550 in Oakland. I introduced myself to him, showed him my commission card, and told him I was making an investigation of the millwork in the San Francisco area. I told him I had been over to see a man named Stewart, I think is the name, I am not sure; [200] anyhow, he was in charge of the office of the Simon Bros. Wrecking Company in Oakland, and I asked Mr. O'Leary if he had been over there and he said yes, he had, that he gave them a list of the local planing mills from which they

(Testimony of Louis D. Wine.)

should buy their lumber. We discussed millwork and Mr. O'Leary said that his union would object to any lumber coming into the San Francisco Bay area, particularly to the jurisdiction of the Oakland Brotherhood covered by his union unless it was made in accordance with the current labor wage scale and according to current union working conditions. I asked him if they would object to using A. F. of L. lumber coming in, and if it was not made under those conditions, and he said they would, and I asked him how they would prevent this from coming in, and he said, well, it was usually effective if I go around to the offending companies and explain them our position and advise them not to use it, and I said, 'What do you tell them?' And the exact words he used were, 'persuasive eloquence.' He said, 'If that is not effective we will take other steps.' And I said, 'What other steps?' And he said, 'That will depend entirely on circumstances.' I said, 'Would you threaten to picket them?' And he said, 'Perhaps they would.' I said, 'Have you ever thrown a picket line around any of these companies?' And he said, 'No, we have not.' I asked him further about bringing into the Oakland Bay area a product manufactured by the Aladdin Company, he was familiar with it, that is the ready cut houses, pre-fabricated and shipped from Portland to Oakland, and he said his understanding was that the unions would object to using these, object to having those houses brought into the Oakland Bay area, and that the union men

(Testimony of Louis D. Wine.)

would not work on such products, and I said, 'Now, how would that house be constructed?' And he said, 'To have that built they would have to bring their own carpenters to Oakland.' And I said, 'Don't you think the union would object to that?' And he said 'Probably they would.' " [201]

Thereupon, the witness, Wine, left the stand, and

LEE MOFFETT

was recalled for further

Cross-Examination

By Mr. Routzohn:

Defendants' Exhibit A for identification, is a complete list of members of the Western Pine Association, as of September 10, 1941. The list was practically the same in 1937. My Association has a small branch office here in the Call Building, in San Francisco. It has had that office probably 8 years. There really isn't anyone in charge of it. It is a small branch office where they keep some of their books and publications. There is not an employee there at all times. Two men work out of it at present—one a forest engineer who travels over the country and comes into the office something like once a month. There is a man in the promotion department who does the same thing and sort of makes that his headquarters, but doesn't stay there. When I was working here I kept some supplies there, and went up there now and then. It is kept open in con-

(Testimony of Lee Moffett.)

nection with another office, the National Wooden Box Association. Our organization contributes to the support of Wooden Box, but it is an entirely separate organization, for the purpose of promotion of wooden boxes which is of importance to sawmills, so they contribute to the support. That office is open all the time, and the two offices are open to the public during office hours. There is a man in charge of the Wooden Box office. There are probably 3 or 4 employees there. I haven't very much knowledge on this because I have been gone three and a half years and when stationed here I didn't maintain this office; was just in and out of it; kept some supplies there and had nothing to do with paying the rent or running it—it was merely a sort of headquarters. I had a desk in a room just adjoining the Wooden Box. That office [202] was there and I could use it.

LOUIS D. WINE

recalled.

“Q. Will you continue and tell us your conversation with Mr. O’Leary?

A. We were discussing the Aladdin Ready-Built Houses, as they are called. I asked Mr. O’Leary whether the unions would object to their being constructed in the Oakland area. He said his understanding was they would object to that and they would endeavor to keep them out of this district.”

(Testimony of Louis D. Wine.)

here. I asked him if he knew whether the Aladdin built houses were made by A. F. of L. labor. He said he didn't know. He said in any event they would keep them out if the millwork was not made in accordance with the current union wages then in Oakland, which he told me is \$1.06½ an hour, as I understood it. I said to him, 'Wouldn't that be contrary to the union policy?' I mentioned to him Mr. Hutcheson, the president of the International, I said, 'How would he feel about that?' He said, 'Mr. Hutcheson's statement to the union was, the union label should be considered the same as legal tender, the same as a five-dollar bill, good any place in the United States.'

"Q. Did he tell you anything as to the reason why they wanted to keep out millwork?

A. Yes, he did. He said there was an agreement to that effect.

"Q. Agreement with whom, did he say?

A. Between the millmen and the unions, and that he had visited a number of places and urged them not to take lumber that was made outside of the San Francisco Bay area, millwork that was made not in accordance with the current union wage scale, and he said if he found such lumber in such lumber yards, they would be permitted to use the present supply, but not be permitted to bring in any more.

"Q. When he spoke about outside the San Francisco Bay area, what did he include in that?

A. He said he was interested [203] only in the

(Testimony of Louis D. Wine.)

Oakland area and he was representing the Millmen in that area only.

"Q. He said he wouldn't permit the millwork to come from outside the Bay area? A. Yes."

"A. He said he would not permit it come into the Oakland area unless it was made in accordance with the current union wage scales prevailing in Oakland, and that he as the business agent and the other unions would do everything they could to keep it out.

"Q. Did he say that it should come from where?

A. He said coming from outside of the area, whether the Pacific Northwest or in the State of California."

The meeting which Gaetjen presided over wasn't a meeting called especially for me. When I approached him he said there is a meeting for tomorrow or the following day—I would like to have you present, come over. We said we didn't want to participate in the meeting. He said it is an open meeting, open to the public—a scheduled meeting. Before adjournment of the meeting, they agreed to further consider the union demands, they would have a later meeting.

Cross-Examination

By Mr. Faulkner:

The first interview I gave here in the order of my testimony was with Mr. J. G. Ennes. I do not recall meeting him before that interview. I think it

(Testimony of Louis D. Wine.)

was arranged over the telephone and I introduced myself, indicating I was a member of the Federal Bureau of Investigation. I explained to him I was investigating the mill work and mentioned in connection with that it was for possible violations of the Antitrust Act. Mr. Ennes indicated that the Commercial Fixture and Store Front Institute was an organization or corporation of which he was Secretary, and my recollection was that it had approximately 12 members. I couldn't say how long our meeting lasted. I made a notation of [204] the conversation in Mr. Ennes' presence. The testimony I have given does not purport to be the entire conversation. We had some that was entirely extraneous to the investigation. I have testified to certain things that would pertain to the investigation in answer to questions propounded to me. I had photostatic copies of certain agreements. The notes I made were in his presence—pencil notes I put down myself at the time of the interview. I have refreshed my recollection from my investigative report. With reference to my testimony in Court, I refreshed my recollection several times.

Thereupon, plaintiff's objection was sustained to the following question:

"Q. Would you mind bringing the notes that you used to refresh your recollection before giving this testimony, Mr. Wine?"

I recall taking from my portfolio certain documents and starting to interrogate Mr. Ennes. He

(Testimony of Louis D. Wine.)

did not tell me that he was not going to give me any information about those papers that I handed to him purporting to be agreements. I remember saying to Mr. Ennes if you don't want to use my copy of contracts, will you use your own, and that Mr. Ennes got out certain documents he had in his possession. I remember he brought his out. In my direct examination that Mr. Ennes indicated he was not familiar with certain clauses in the papers, I was referreing to his own contract. I directed Mr. Ennes' attention to a certain paragraph of his own contract,—the paper that he produced at the time. Mr. Ennes did not tell me that paragraph didn't mean anything. He said he didn't know the content of that; that he hadn't read it in the agreement. I questioned him about that and mentioned that it was most unusual for a Secretary of an institute not to know what he had signed. He said, "I don't care to discuss it further;" that he had heard about several indictments being returned in Federal Court in connection with [205] building trades and said, "I don't want to get involved." He didn't comment on the paragraph that "so far as my group is concerned, that paragraph does not mean anything." He said he didn't know what was in that paragraph. I am referring to the contract with his signature—the 1938 contract--June 15, 1938, the date it was effective, as I understood it. I mentioned that I did not think he was very helpful to the Government. I don't remember him saying, "So you may

(Testimony of Louis D. Wine.)

understand my position, I am not your witness at all." It is absolutely untrue that I got out a piece of paper and drew a picture of a Federal penitentiary, the Department of Justice and the Attorney General's office. I don't recall that I explained to Mr. Ennes the relation between the Federal Bureau of Investigation, the Attorney General's office and the penitentiary. I don't recall getting out a paper and diagramming it. I would say that it didn't occur. I do not recall drawing a diagram in connection with the incident where I said to Mr. Ennes "I don't think you are very helpful." There is nothing at all about a diagram in my notes. I have no recollection of that. I don't recall a conversation with Mr. Ennes about the business in which the members of the Commercial Institute were engaged. I didn't have a conversation about subpoenaing him some place as a witness; that if he would not cooperate I would subpoena him. I don't remember Mr. Ennes saying that I could subpoena him and that if the Judge wanted him he would come. I had one contract when I was talking with Mr. Ennes. The discussion related to millwork. He was not inclined to talk freely with me. The contract that I had, that I asked him about, that we were particularly interested in, was the one with the restrictive clauses of 1936. I only had one, he had several there—he had two that I recall. I do not think they were duplicates of the same contract. The one we discussed had the restrictive clause in it—restricting millwork, and I

(Testimony of Louis D. Wine.)

asked him specifically about that. The one we discussed was [206] the contract he had—he brought his contract out. My recollection is this conversation was had with respect to a contract dated June 15, 1938.

I talked to Mr. John Mullen shortly after I talked to Mr. Ennes—shortly after, in April, 1940. I introduced myself to Mr. Mullen and explained to him I was a member of the Federal Bureau of Investigation. I told him the F.B.I. was making an investigation of millwork; that there was a reported Antitrust violation and we were obtaining information. I asked him to cooperate with me and he said he would cooperate fully. I don't remember the time of our conversation. He gave me some information regarding the business of Mullen Manufacturing Company. I don't recall the details of it. He told me they had been in business for many years, employed approximately 65 union millmen; that he had a contract with Woolworth's; that it grossed \$200,000 a year; that he was making very little out of it due to overhead. He indicated what he meant by overhead. He mentioned Social Security, increased cost of raw materials, new taxes, that taxes were increasing overhead approximately 10 per cent, as I recall, and he mentioned cost of his labor. Upon my direct examination I said that Mr. Mullen got into discussion concerning an agreement to keep material out of San Francisco. He said he knew there was such an agreement; that is substantially all I remember. I don't recall he said he was not a

(Testimony of Louis D. Wine.)

party to the agreement and that he didn't want *thing* kept out of San Francisco. I don't recall that he said definitely that it was an agreement to ~~keep~~ material out of San Francisco and that Mullen Manufacturing Company were the users almost in their entirety of articles coming from without San Francisco, and that he was not a party to that combination if there was one. He said he was a big user of millwork. He told me a large quantity came from the East; that he has his own milling machines and could make his own millwork. He said some [207] of the material came from without and some came within the State. He mentioned in the course of our conversation he was in favor of the efforts of the Government to break up any combination that restricted the flow of millwork into this area. That is substantially my testimony. He mentioned hardwood coming from out of the State of California, from North Carolina. He stated a quantity of their business was work on hardwood. I don't remember the details or the quantity he expressed. He mentioned the Antitrust Laws, said he was heartily in favor of the Sherman-Arnold investigation and thought there should be a free flow of material interstate without any restriction whatever. I don't recall what I said. He indicated the gross volume of his business only in so far as the Woolworth contract was concerned.

When I met Mr. Gaetjen in March, 1940, I introduced myself, explained I was a Federal Bureau of Investigation Agent, showed him my commission

(Testimony of Louis D. Wine.)

card, and explained we were making an investigation of any business violation of the Antitrust Laws in connection with millwork. It was after I indicated the purpose of the investigation that I was invited to attend the meeting which was held in Mr. Gaetjen's office. I believe the number is 3196 24th Street, San Francisco. That is not a mill, it is an office of the Lumber Products Association.

I made notes of the conversation with Mr. Mullen and dictated them to my stenographer. I have refreshed my recollection from them before testifying. I have done that recently.

Thereupon, Mr. Faulkner made the same request for the production of the notes. The request was denied by the Court and an exception was noted.

I don't remember in the conversation with Mr. Ennes that he said to me, "If you are going to make notes here of the conversation, let us now call in a stenographer." He merely gave me information which I took down at his dictation. I don't [208] recall that when I started to take notes Mr. Ennes said "If you start taking notes I am going to get a stenographer." I think I would deny that occurred. I know I would, because I was taking notes at his dictation. I have no recollection of any conversation concerning calling in a stenographer. It is possible that it may have happened.

(Testimony of Louis D. Wine.)

Cross-Examination

By Mr. Routzohr:

I live at 1540 Alvarez Avenue, San Jose, California,—have lived there about a year. Before that, San Francisco for the past three years. Before then, in Kansas City about 19 months. Before then, in Salt Lake City approximately two years. Before then, in San Francisco about four years. During all that time I was Special Agent of the Federal Bureau of Investigation. I have been a Special Agent approximately 17 years. Before I went to the F. B. I. I was employed in the Department of Justice as a clerk at Washington, D. C., for approximately three months. I am 47. Before then I was Purchasing Agent of Sun-Maid Raisin Growers at Fresno, for approximately three years. In 1921, I was Purchasing Agent for Yosemite National Park for two years. I met Mr. O'Leary for the first time approximately March 22, 1940, and made an appointment with him by telephone, and met him in the A. F. of L. Building, Oakland, California. I did not know then whether Mr. O'Leary had been called as a witness before the Grand Jury. I don't know of my own knowledge whether he had testified before the Grand Jury. I saw him in the Grand Jury witness room after that. I presume he was called—I don't know. I took some notes while we were having the conversation. I told him our purpose in connection with a general investigation we were making into the mill-work industry. I didn't write out a written state-


(Testimony of Louis D. Wine.)

ment and have him sign it. I have no recollection of that.

I took down notes of the conversation dictated for my [209] investigating report. I examined my regular investigation report before coming on the stand, and refreshed my recollection from it last Monday and Tuesday. F. B. I. reports are made in a number of copies. The original goes to Washington and is retained in the files there. Three copies are retained in our San Francisco office. One copy has been transmitted to the U. S. Attorney in San Francisco. I have the copy of the F.B.I. which I consulted. The notes were destroyed after the report was made. The report contained everything in the notes. I know of no statement signed by Mr. O'Leary on March 22, 1940. I have nothing in my possession signed by Mr. O'Leary. He said he was business agent of the Millmen and they were getting a high scale in this area. As I recall, \$1.06½ an hour. He did not state the scale was in dispute at the time. I don't recall he made mention of an increased wage scale. I didn't know there was a wage scale dispute on at the time I talked to him. He said he did not object to lumber except that which came in manufactured at a different wage scale and under different working conditions than prevailed in the local area. He used the expression, "persuasive eloquence" in keeping out lumber; that he would talk to the users of this lumber and convince them, and keep it out of this area. He didn't say if he was

(Testimony of Louis D. Wine.)

unable to convince the party that the lumber was permitted to be worked in the mills and also used by the carpenters on the job. He did not tell me that no union refused to work on lumber that came in so long as it had the union stamp on it. He didn't tell me that the carpenters at no time refused to work on lumber that was delivered on the job no matter where it came from. He told me the policy of his union was to keep any millwork out of the Oakland area that was not made in accordance with the prevailing wage scale of that union—\$1.06½ an hour. He said the local union is getting a good wage and we do not want to compete with millwork at a lower wage scale regardless of whether made [210] under union conditions or not. He did not give me the reason other than they were getting higher wages. He didn't mention trying to keep the members of his own union in employment, but one would naturally draw that conclusion. He said they were making good wages. He was very active in representing his union. I asked him, "Does Mr. Hutcheson approve your methods?" And he said, "No, Mr. Hutcheson has a different idea." He said, his statement was that the union label should be considered the same as legal tender, and he offered as a result the same as a \$5-bill, good any place in the United States. I asked him specifically about Aladdin fabricated house and whether he was familiar with them and knew where they were made, and he said, in Portland, and they were being shipped here and



(Testimony of Louis D. Wine.)

marketed in the Bay area, in Oakland. I said, "Do you know they are 100 per cent union?" And he said, "Regardless of whether they were or not," he would not permit them to be sold and erected in Oakland, unless made in accordance with the current wage scale prevailing in that area. He did not express himself about being union made. I told him they were. I told him that I had received information they were 100 per cent union made; shipped to Oakland in a sealed freight car, and that the local union did not work on them because they were not made at the current union wage scale.

By Mr. Tuttle:

William L. Hutcheson, General President of the United Brotherhood of Carpenters and Joiners of America was evidently the one referred to as saying lumber bearing the union label, the carpenter label, should circulate as freely as a \$5-bill circulates.

Redirect Examination

By Mr. Zirpoli:

I would say the conversation with Mr. Ennes took considerably less than two hours. The contract I was asked about restrictive clause in a contract, was the contract that would [211] start on June 15, 1938. I meant that the meeting with Mr. Gaetjen was at the office of Lumber Products Association.

In a general investigation, the usual practice is to destroy original notes after the report is made and verified by the agent. The notes used to refresh my memory are the notes dictated by me. My own

(Testimony of Louis D. Wine.)

copies are carbons of the original sent to Washington. After being approved and signed by the agent in charge, the original is sent to Washington. Office copy is signed by the stenographer and retained in our files. Reports from which I refreshed my recollection were made within a few days after interview; was checked at that time and truly reflected the interview had.

Recross-Examination

By Mr. Faulkner:

I have no control over the reports. That is with the Attorney General. I said in general investigations at times these notes are not retained. I do not know what caused that practice. It is not a fact that the purpose of destroying original notes is that an accurate record of what happened at a particular time in the past can no longer be in existence. It would be difficult for me to determine actually how long I talked to Mr. Ennes. I have made thousands of interviews since that time. I base my statement it was considerable less than two hours for the reason that Mr. Ennes did not answer questions; said he didn't want to become involved in it. I could not give you the exact period of time. I could not tell within twenty minutes either way..[212]

C. B. SHERMAN,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I am Special Agent of the Federal Bureau of Investigation and have been since December, 1939. I was assigned to the San Francisco office in March, 1940. I know Mr. Louis Wine who is also a Special Agent of the Federal Bureau of Investigation. I accompanied Mr. Wine to the office of Lumber Products Association in San Francisco in the month of March, 1940, and saw Mr. Gaetjen there. I attended a meeting of Lumber Products Association with Mr. Wine. Besides us and Mr. Gaetjen there were several members of Lumber Products Association present. I don't recall their names. Mr. Gaetjen was secretary of Lumber Products Association and presided at and addressed the meeting.

"Q. Will you tell us what Mr. Gaetjen said at that meeting?

"Mr. Faulkner: We object to that as immaterial, irrelevant, and incompetent, hearsay as to the defendants on trial, and not within the issues of this case, and no foundation laid, in that there is no evidence that any act of declaration of Mr. Gaetjen at that time was pursuant to or in furtherance of the charge laid in this indictment.

"The Court: Overruled.

"Mr. Zirpoli: Q. Now, will you tell us what Mr. Gaetjen said at that time? 6

(Testimony of C. B. Sherman.)

"A. Mr. Gaetjen called the meeting to order, and, as I recall, he said—the first thing he did was to introduce Mr. Wine and myself as members of the F.B.I., and then stated the purpose of the meeting was to determine whether or not the Association would go on record as approving a new union demand for increased wages. He said that, as the members there would recall, they had an agreement to increase the wage scale [213] in the past, and that they had agreed to do it on the condition that the union would cooperate with them in keeping the millwork products out of, that is, the products from Washington and Oregon out of the Bay area, and he said that under the agreement that they had made the products from those two particular States, Washington and Oregon, would not be worked on by the union when they were sent in here, and that, in effect, it would build a sort of Chinese Wall around the Bay area. He did state, however, that he was going on record as not being in favor of the new wage increase, due to the fact that the unions had not carried out their end of the previous agreement that he talked about, that instead of keeping the products out and building a sort of Chinese Wall around this area they had made such demands on the Lumber Association here, the Lumber Products Association, that it built a sort of Chinese Wall around the Bay area, and that he wanted their expression of opinion as to whether or not they would be in favor of the wage increase.

"That is about all I recall."

(Testimony of C. B. Sherman.)

Cross-Examination

By Mr. Faulkner:

That day was the first time I had a meeting with Mr. Gaetjen. We were out in the morning, at which time he told us there was to be the meeting which we attended, and we were back; I think it was in the afternoon of that same day. He said it would be a meeting of the Millmen and it was an open meeting. I don't recall a conversation with Mr. Gaetjen that afternoon before the meeting started. He did not state: "What are you doing here?" He invited us there that morning; I am sure he said that it was an open meeting; that we could come if we liked. I don't recall just what words he used, but he said there was to be a meeting; it was open. I think there [214] was a sign on the outside; we said we were there just to observe the meeting, and he said we were free to do so. We got there shortly before the men assembled; some, but not all were there; the meeting had not started; shortly before it started we went in and sat down.

Mr. Gaetjen did not state to Mr. Wine or me that if we wanted to see him we would have to come back later. He did not say anything like that and there was no further conversation about our being allowed to be present at the meeting. I had no conversation with Mr. Gaetjen indicating that an investigation was being conducted concerning Antitrust activities; I was merely an observer with Mr. Wine. I do not recall that Mr. Wine made such statement; he may have.

(Testimony of C. B. Sherman.)

Mr. Wine introduced himself; said that he was Special Agent Wine and that I was Agent Sherman. I think Mr. Wine asked to see any minutes or records they might have pertaining to the formation of the Association. I don't recall he indicated the purpose or that there was any investigation being conducted concerning activities of Lumber Products Association. He made no statement concerning activities of the Millmen in San Francisco, the unions. He asked for a membership list of the Association.

Mr. Wine introduced himself and me as Federal Bureau of Investigation Agents; asked for some of the records and I don't recall he indicated the purpose; it is possible he did. He did not mention constitutional rights. He merely requested the records; he did not have to produce them. Mr. Gaetjen stated his records were very meager. I believe all that was done at the time was that Mr. Gaetjen dictated to Mr. Wine the names of the members of Lumber Products Association from his files. I remember clearly he told him he did not have to produce the records; that he was merely requesting that he be shown or [215] would like to see them. I did not participate in the conversation.

At the meeting later in the day my best recollection is between ten and twenty, possibly twelve or fifteen men were there. I don't know any of them. I was introduced to one or two but do not recall their names. I do not know of my own knowledge that they were Millmen.

About a Chinese Wall, Mr. Gaetjen said that they

(Testimony of C. B. Sherman.)

had formed an original Agreement with the union prior to the time of this meeting and that the purpose of the Agreement was to prevent the millwork from Washington and Oregon from entering the Bay Area; and that in so doing they were forming a sort of Chinese Wall around the Bay area to keep other products out in order that the products of the Association within the Bay area could be used. He told that to the members present as I recall. That was the purpose of that Agreement. I gathered they knew what the purpose of the original agreement was since they were members. I do not know whether they were members or not. From what he said I understood he was explaining to them, as members, what the purpose of the original agreement was, or calling it to their minds. I made no notes and I am testifying solely from recollection of the meeting I attended. I have not refreshed my recollection by reading the testimony or any reports by Mr. Wine. I have not read anything; was forbidden to read them. I am testifying solely from memory of the transaction that occurred in March, 1940.

“Q. Now, as a matter of fact, Mr. Sherman, didn't Mr. Gaetjen say to that group of men in connection with the Chinese Wall and explain to them that the labor demands, and the amount of money being paid for labor had created a Chinese Wall in the Bay area, so that the merchandise of those Millmen could not go out of the Bay area?

“A. I stated that first, I said that following the

(Testimony of C. B. Sherman.)

statement that the purpose of the original [216] agreement was to build a Chinese Wall around the Bay area, the activities of the Unions in failing to carry out their part of the agreement had succeeded in building a sort of Chinese Wall around the Bay area."

Mr. Gaétjen did mention a Chinese Wall that had been built around the mills of San Francisco so that their products could not go out from this market in competition with a lower wage scale in other areas in this immediate district; but before he mentioned that, he also mentioned the Chinese Wall which had been the purpose of the original agreement that they had made with the Union. He mentioned the Chinese Wall twice on that day, in two different senses. He used the expression in the sense of a wall that prevented articles going out and preventing articles coming in.

I do not recall any conversation on the subject of the position of the mills in competing with similar mills in this general locality. I do not recall what he stated, if anything, of the position of the mills with reference to competing with other mills in this immediate vicinity, apart from Washington or Oregon, or Wisconsin, or Los Angeles.

I do not recall the exact amount of the Union demands; my best recollection was they were demanding a Nine Dollar (\$9.00) day; apparently it was higher than it had been theretofore; the exact amount of increase I could not say; I do not recall.

(Testimony of C. B. Sherman.)

My statement was based upon what I heard at this meeting. I gathered at the meeting the Union had made a demand for additional compensation. That information was imparted to those who came to the meeting, by Mr. Gaetjen. My recollection is he said he was not in favor of meeting the demand. As I recall about all he said: "As your secretary, I am not in favor of meeting the increased demand."

He asked for a discussion on the subject and they [217] agreed to send to the Union, through Mr. Gaetjen, a counter proposal, the amount of it I do not recall. He did not say they could not meet the demands of the Union; but they would not be in favor of it. Mr. Gaetjen said he was not in favor of meeting it due to the fact that the Unions had failed to hold up their end of the agreement. I do not remember the general discussion. They talked about a man that was an acquaintance of all of them that had recently bought a mill of some character, and that he had anticipated quite a profit through the operation of it, but had not done so. I feel sure the counter proposal to be given the Union was stated in my presence; I do not remember what it was.

By Mr. Routzohn:

I am testifying purely from memory; I have had conversations with several people about the case. I did not converse with Mr. Wine before he went on the stand about what I was to testify to. We didn't talk over my experiences that I related this morning; we were strictly forbidden to do that. We didn't

(Testimony of C. B. Sherman.)

discuss what we were to testify to. I haven't read a report or notes of any kind; I made no notes and read no notes that Mr. Wine made or had or reports he may have had. I told Mr. Clark everything I recall and talked to Mr. Zirpoli and he asked me to go over all I knew about the case which I recall today, and which I did. Other than that I have had no outside help in refreshing my memory. They didn't tell me anything; I am relying entirely upon memory. To the best of my knowledge I am certain of what I have testified. I have made numbers of other investigations since 1940. I have not attended other meetings of that character. I recall very definitely what took place as I have given my testimony.

I don't recall Mr. Gaetjen saying: "We are not in position to pay them additional wages." [218]

My recollection is he said he was not in favor of granting the increase. If Mr. Wine testified that Mr. Gaetjen said: "We are not in a position to pay them additional wages", I couldn't say if Mr. Wine is correct. All I can say is how I recall it. My testimony is based upon memory and what I recall took place. I remember mentioning, explaining Chinese Wall several times in my testimony. I don't recall that Mr. Gaetjen said, when he mentioned the Chinese Wall, that the agreement between the Millmen and the Association was to exclude from the San Francisco Bay Area millwork that had not been made in accordance with the current wage scale.

(Testimony of C. B. Sherman.)

Mr. Faulkner:

Mr. Zirpoli explained that I should not refresh my memory by talking it over with Mr. Wine, or read any reports; he did that when I hit San Francisco, the day I arrived, I think it was Thursday.

Redirect Examination

By Mr. Zirpoli:

I did not prepare the report. The conversation I told about took place in 1940. I prepared no memorandum of what transpired at the meeting nor did I read any memorandum prepared by anybody else in 1940. I was appointed Agent of the Federal Bureau of Investigation in December, 1939. I spent from December 4th until February 17th in Washington, D. C. in Training school.

Recross-Examination

By Mr. Routzohn:

"Mr. Routzohn: Just a moment.

"Q. Since you have not had the opportunity of seeing the notes of Mr. Wine, I will ask you—I am reading from Mr. [219] Wine's testimony—"Mr. Gaetzjen went on and stated that there was a verbal agreement between all Millmen and the Association to exclude from the San Francisco Bay Area millwork that had not been made in accordance with the current wage scale."

"Now, will you state whether or not Mr. Wine was correct in that statement, or whether your statement is correct?"

(Testimony of C. B. Sherman.)

"Mr. Zirpoli: I object to this as argumentative, and it has been asked and answered.

"The Court: Sustained.

"Mr. Routzohn: That is all.

"Mr. Zirpoli: That is all."

Thereupon the Government called upon Bay Counties District Council of Carpenters to answer to the subpoena duces tecum, with the understanding that the same objection should be reserved. The identity of documents of Bay District Council of Carpenters was stipulated as follows:

5. Folders marked "U. S. Exhibits Nos. 109 to 113," respectively, for identification, are the minutes.

"U. S. Exhibit No. 114", for identification, is an Agreement or copy of Agreement.

"U. S. Exhibit No. 115", for identification, is a folder containing correspondence file and miscellaneous papers.

"U. S. Exhibit No. 116 and 117", for identification, are booklets consisting of constitution and by-laws.

Thereupon a miscellaneous file and agreements, which were part of the records of Local 550, were identified and added to the records of Local 550.

Thereupon, by stipulation, records of Millmen's Union No. 262 were identified as follows:

"U. S. Exhibit No. 118, for identification, is the minutes of Local 262; and "U. S. Exhibit No. 119, for identification, is the charter. [220]

Thereupon records of Local 1956 were identified as follows:

The charter was marked "120"; the minutes "121"; the constitution "122"; correspondence "123", "U. S. Exhibits for identification."

It was stipulated that the minutes, papers and correspondence produced are what they purport to be.

Thereupon minutes of the Six Counties Conference Committee, kept by Walter O'Leary, were produced from the possession of the secretary, Walter O'Leary, and were marked "U. S. Exhibit No. 124", for identification.

Thereupon, over objection that it was incompetent, irrelevant and immaterial, a certified copy of the Articles of Incorporation of Commercial Fixture and Store Front Institute were received in evidence and marked "U. S. Exhibit No. 125".

Mr. Howland thereupon read from the exhibit the certificate thereto of Frank C. Jordan, Secretary of State of the State of California, showing the transcript to be a full, true and correct copy of the original on file.

"The paragraph of these articles of incorporation of the Commercial Fixture and Store Front Institute which begins "Second," reads as follows:

"That said corporation is not formed with a view to, and does not contemplate, pecuniary gain or profit to the members thereof, and does not contemplate the distribution of gains, profits or dividends

to its members for any service by it rendered; and that the purposes for which it is formed are:”—

“And skipping to the paragraph on page 2 which reads:

“To represent the members of the Institute, or any of them, in any dispute or controversy relating to the negotiation, execution and performance of a fair labor contract in which [221] any member of the Institute may be, or might become, involved.

“To contract in the same manner and to the same extent, and to deal with real and personal property, as a natural person could do; and to have and possess all the rights and powers given to non-profit corporations by the laws of the State of California.”

“That is all I will read at this time.”

It was thereupon stipulated that the only part of the exhibit in evidence, is the portion read.

“Mr. Faulkner: In order that what Mr. Howland has read will be clearly understood, I will read a couple of very short paragraphs:

“We, the undersigned, resident of the State of California, do hereby voluntarily associate ourselves together for the purpose of organizing a nonprofit corporation under Title XII, Part Four, Division First, Civil Code of the State of California, and we do hereby certify:

“First: That the name of said corporation shall be Commercial Fixture and Store Front Institute.”

“Then comes the paragraph read by Mr. How-

land, and Mr. Adams suggests that all the purposes be read. The first purpose in paragraph 2 was read by Mr. Howland. Then appears the following:

"To encourage and facilitate social, and more intimate personal, relationships among, and to provide entertainment and recreation for, general contractors who are primarily engaged in designing, manufacturing, selling and installing commercial fixtures and store fronts and work incidental thereto, and who are desirous of maintaining a high standard of business ethics and of dealing fairly and conscientiously with each other and with their employees and the public.

"To collect, compile and make available to its members information, statistics and data of every sort that may be deemed [222] to be of interest or advantage to the members of the Institute or to the industry as a whole.

"To conduct schools and classes for the education and training of apprentices; and to foster and encourage the apprentice system among the members of the Institute and in allied trades and crafts to the end that youth may be properly and adequately served and that the industry will not suffer for lack of skilled artisans.

"To do whatever can be done to maintain proper relationships among the members of the Institute and between them and their employees, and to insure the honest observance of all agreements, contracts and obligations.

(Testimony of C. B. Sherman.)

“To secure collective action by the members of the Institute to the end that stable, peaceful and harmonious relations between them and their employees will be promoted and established, and that working conditions fair and just to both employers and employees may be maintained; and as an organization to co-operate with any other group or groups of employers with respect to any matter or thing that may be deemed to be of advantage or interest to the Institute or to its members, or any of them.”

“Then come the two paragraphs read by Mr. Howland.

“Third: That the county in this state where the principal office for the transaction of the business of the corporation is to be located is the City and County of San Francisco.”

ALFRED E. SCHMIDT,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I am Clerk, auditing department, Crocker First National Bank of San Francisco. Records marked “U. S. Exhibits [223] Nos. 126 to 130” for identification, are records of the bank produced pursuant to subpoena. Papers marked “Exhibit 126” for

(Testimony of Alfred E. Schmidt.)

identification, represent deposit tags made to account of Ostlund & Johnson in a commercial account for the period November 5, 1936, to December 31, 1940, inclusive, and are all of the deposit slips I was able to find in the bank's records, whose practice is to keep deposit tags for a period of five (5) years. "Exhibit 127" for identification, consists of a signature card in the name of Ostlund & Johnson, evidencing commercial account under date of March 7, 1930, bearing signatures of those authorized to sign on the account; also a signature card representing account in the name of Cabinet Manufacturers Institute of California, Northern Division, opened November 20, 1930, bearing signatures of those authorized to sign on the account; also signature card representing account in the name of Commercial Fixture and Store Front Institute, Incorporated, opened on January 29, 1940, bearing authorized signatures to sign account; copy of resolution of Cabinet Manufacturers Institute of California, Northern Division, regarding authorized signatures; letter dated June 15, 1931, signed by Oscar Ostlund, regarding signature of Joseph Kuhn on account of Ostlund & Johnson and letter of Ostlund & Johnson, signed Oscar Ostlund, regarding withdrawal of authority of L. W. Forbes and Joseph Kuhn to sign checks; acknowledgment of the letter by Crocker First National Bank. Papers marked for identification 127 are original records of the bank pertaining to the two accounts referred to and were prepared in the regular course of business. Bundle marked

(Testimony of Alfred E. Schmidt.)

for identification "Exhibit 129" consists to deposit tags in commercial account of Cabinet Manufacturers Institute of California, Northern Division, from April 8, 1937, to December 5, 1939, and are all of the deposit slips I was able to find in the bank's records.

I also have ledger sheets covering commercial account of Cabinet Manufacturers Institute of California, Northern [224] Division, covering aforementioned account for period from April 8, 1939, to January 29, 1940. Ledger sheets relate to the same account as the deposit slips, and deposit slips were received in the regular course of business. Ledger sheets were likewise prepared in the usual course of business. To the best of my knowledge the ledger sheets correctly reflect transactions which they purport to record and were made in the regular course of business.

"Exhibit for identification 130" covers deposit tags for commercial account of Commercial Fixture and Store Front Institute for the period of January 25, 1940, to December 11, 1940, inclusive; also ledger sheets for the same account for the period January 29, 1940, to December 27, 1940. The deposit slips are all I was able to find in the bank's records and are the original deposit slips received by the bank in the regular course of business. The ledger sheets relate to the same account as the deposit slips and were prepared by the bank in the regular course of business, to the best of my knowledge and belief.

(Testimony of Alfred E. Schmidt.)

The bundle of sheets marked for identification "Exhibit 128" is ledger sheets covering the commercial account of Ostlund & Johnson for the period of December 16, 1935, to December 31, 1940, inclusive, and relate to the same account as the deposit tickets marked "Exhibit 126" for identification. They were prepared by the bank in the regular course of business to the best of my knowledge and belief.

My position is Clerk, auditing department. I have been employed in that capacity about twenty (20) years and I am familiar generally with the system of bookkeeping. Ledger sheets are records of original entry and are the bank's permanent records of the transactions that purport to record.

Cross-Examination [225]

By Mr. Faulkner:

I did not prepare any of the papers numbered 128 myself, nor participate in any of the transactions reflected by such records. I did no physical work on any of the records except take them out of the file and bring them here. I first saw the deposit tags, No. 126, after the service of the subpoena. I did not take any of the purported deposits nor have any business transactions with Ostlund & Johnson on any of them. None of the deposit slips numbered 130 were made by me; nor had I seen them until I received the subpoena, to the best of my knowledge and belief. My connection with these records is.

(Testimony of Alfred E. Schmidt.)

that a paper was served on me; I went into the files and brought them out. None of the resolutions were made pursuant to a request by me. I had no business transactions with Mr. Ostlund or his wife or with Mr. Mullen and Mr. Ostlund. To the best of my knowledge and belief, the first time I saw any of these papers was when a subpoena was served and I brought them out here.

Redirect Examination

By Mr. Howland:

I have been employed by the bank for approximately twenty-five (25) years. The bank does not require that the depositors file their own deposit tickets. The bank does not prepare a deposit ticket. These records are directly under charge of the auditing department of the bank, filed in what is known as the auditor's vault; the auditor of the bank has charge of them. After colloquy between Court and counsel, concerning the purpose of proof, it was stipulated as follows:

"Mr. Faulkner: I understand, your Honor, that the purpose of all of this is to prove that they were members of the Commercial Fixture and Store Front Institute, a corporation, and also the Cabinet Manufacturers Institute of California, Northern [226] Division. With respect to the Commercial Fixture and Store Front Institute on behalf of the defendants we represent, we stipulate that all of these defendants that Mr. Adams' firm and I represent were members of the Commercial Fixture and Store

Front Institute, a corporation, the articles of which were read during the period covered by the indictment, the return of the indictment, on the one hand, and the date of incorporation on the other, that is that full period; and that all of the members of the group that are represented by Mr. Adams' firm and myself were members of the Cabinet Manufacturers' Institute during the period covered by the indictment up to the incorporation of the Commercial Fixture and Store Front Institute, except Mr. Roselyn; it commenced to exist at the end of 1937, and further, that each defendant represented by Mr. Adams' firm and myself paid dues to the Cabinet Manufacturers' Institute during the period that we have stipulated they were members, and that they paid dues in the corporation during the period we have stipulated that they were members.

"Mr. Howland: Might I ask what is the situation of Mr. Roselyn?

"Mr. Faulkner: He did not start business until 1937.

"Mr. Howland: But after that time—

"Mr. Faulkner: The stipulation binds him from the time he commenced his business, in the end of 1937, until the date of the return of the indictment, he was a member of either of those institutions and paid dues, and that stipulation is entered into with the understanding that we are not going to be bothered with any of these records.

"The Court: Yes.

"Mr. Bacigalupi: On behalf of Mangrum, Holbrook & Elkus, that company was incorporated on July 2, 1937. Since that time it has been a member of the Institute and has paid dues at various times although not the full amount. Mr. S. [227] Kulcher was not a member of either of those institutes and has never paid dues, so that of course I cannot make that stipulation, but I would say this, that if the Government can show through any bank account that he did we have no objection to their producing any bank to show that he did make payments.

"Mr. Faulkner: We will state to your Honor that if all of the records were produced they would never show Mr. Kulcher paid any dues.

"Mr. Howland: That is satisfactory to the Government. May the record show that the various counsel representing the labor union defendants have no objection to this stipulation.

"The Court: I have heard no objection. I suppose the records that were introduced may be withdrawn?

"Mr. Howland: Yes, the stipulation will be substituted for our proof.

"The Court: Thank you, Mr. Faulkner. While we are having a little wait here, have all counsel filed their proposed instructions?"

S. H. McNAMAR,

called as a witness in behalf of the plaintiff, was duly sworn and testified, as follows:

Direct Examination

By Mr. Burdell:

I am manager of Symon Brothers; I have held that position thirty-three (33) years. I have charge of the office, buying, advertisements, correspondence. Buying includes everything in building materials. Symon Brothers is located at 1435 Market. Its business is building materials and wrecking, including millwork.

I met Charles Helbing, I think the first time in October, 1939, at my office at Symon Brothers. I believe he [228] said he represented Bay Counties Council of Carpenters. No one was present at the meeting but us. He said he was there for the purpose of asking our cooperation in the buying of certain lines of materials, certain sash, open sash and certain kinds of doors, and that we would be required to buy our materials within the jurisdiction of five (5) Bay Counties, consisting of Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara. I asked him if we complied with that request, where would we procure our material? "Well", he says, "there are plenty of mills here in San Francisco and around the Bay." I think I asked him where he might suggest and he suggested the Eureka Mill and Boorman, and I am not positive, but I think he said the Pacific Manufacturing

(Testimony of S. H. McNamar.)

Company of Santa Clara; but he said: "There are others"; and I informed him it would be impossible for us to buy from any of these mills that he mentioned or anywhere within the jurisdiction of these five (5) counties and compete with the going prices here in San Francisco at the time, and he asked me then if I had—I spoke particularly of carload lots—attempted to buy cars in San Francisco and I told him we had not because it was worthless—a waste of time. The mills themselves realized this and they didn't even solicit our business.

I asked him who had agreed to this proposition of his Union, and he said there was mostly all of them coming in with us on it, something to that effect. I told him I didn't see how we could do it, but would take it up and consider it and talk to him later.

I think I told him that the doors contained the Union Label and that they were—in fact, the sash and doors both were being manufactured by Union labor in the Northwest. He said: "That doesn't make any difference; we have idle men here and we have to put them to work."

I mean the one-panel and the five-panel front doors [229] we were purchasing; they contained the Union Label but the sash did not.

Eureka Mill is located on 1700 block, Mission Street. Boorman Mill is located farther down South of Market. We have done business with them.

(Testimony of S. H. McNamar.)

I had another conversation with Mr. Helbing in November, 1939, in my office; just he and myself were present.

He said he was in on the same proposition that he was previously and wanted to know what we had done about it and I told him we had done nothing about it and he was in more of a defiant mood and said: "It has come to the point where it will be necessary for you to buy in these counties," and the rest of the conversation was very similar to the one I gave before. He finally paused and I didn't say anything, and after a couple minutes he got up and said: "Well, this is your answer, is it?" I said: "Yes, that's the answer." Then he left.

Symon Brothers does not operate a planing mill. We have a rip saw, a cut-off saw, a little mill, not a planing mill. The business of the company consists of purchasing and selling.

There was a third meeting with Mr. Helbing in December, 1939. There was present Mr. Ryan, David Ryan and Mr. Helbing and Mr. Rickett; they are all representatives of the Building Trades, and Mr. William Symon who is one of the partners and owners of Symon Brothers. Mr. Ryan said he was there in the interest of Bay Counties Carpenter Association. I don't think Mr. Rickett told whom he represented; I knew he was with the Building Trades; I never met him before. There was a little conversation took place according to general conditions at first, and Mr. Ryan made the statement

(Testimony of S. H. McNamar.)

that he was there in the interest of the carpenters, the Bay Counties Carpenter Association and that he would like to see us cooperate in the buying of this material, and we went through the same conversation [230] that I have already given, which related to prices and competition and I informed him the mills they wanted us to buy from in San Francisco were practically in competition with us. Then Mr. Helbing made the statement that for the good of the community, whether we made any money or not on the sash and doors, we should buy it here, just to keep these fellows working, or words to that effect. Mr. Symon then asked Mr. Ryan, "What would happen? Would they throw pickets around the place?" Mr. Ryan sort of evaded that particular question, but said, "Well, your men in the yard belong to the Union, don't they?"

"So we naturally inferred by this—

"Mr. Routzohn: We object to what he inferred.

"Mr. Burdell: It is simply to show his state of mind.

"The Court: Overruled.

"The Witness: We rather gathered from this that inasmuch as Mr. Ryan asked the question if the men in the yard are union labor men that if we didn't comply we would be picketed, or our men might be called out. That is merely an assumption, so far as that goes; that was the way we took that.

"The Court: Was anything further said?

"Mr. Burdell: Q. Anything further said at that meeting?

(Testimony of S. H. McNamar.)

"A. Well, yes. When it came to that point Mr. Symon said, 'Well, we won't buy anything from the North, any further material from the North until we take it up with you,' which seemed to be very satisfactory to the gentlemen present, and then I made the statement that we had already a car that was due most any time and it would be rolling in, and they made no comment on that, but the car did come in and we unloaded it."

Prior to that time I had been purchasing millwork from mills in the Northwest. The Albany Door Company in Oregon and the Central Door and Lumber Company who were working with the Albany Door Company, but had separate mills at that time, and [231] the McCleary Timber Company. Central Door and Lumber Company might sometimes be called the Central Door and Plywood Corporation. I think they did start to make plywood, we haven't done any business with them lately. I made the purchase from Mr. M. A. Peel in that company. After those conversations I did not continue to buy millwork from those companies nor from any company outside the Bay Area at that time. We did later, but it was sometime later that we did. Mr. Stewart is manager of our Oakland branch and purchases for that branch. We ordered a car of millwork from Mr. Woodson, he couldn't deliver it. The car of millwork ordered from Mr. Woodson was not delivered; I cancelled the order.

With reference to the millwork purchased from

(Testimony of S. H. McNamar.)

Central Door and Lumber Company or Central Door and Plywood Corporation, in Portland, the doors bore a Union Label. We also purchased sash from that company which did not bear a Union Label.

Cross-Examination

By Mr. Routzohn:

I have been with Symon Brothers since 1907; manager about ten (10) years. I had charge of purchases before I was manager, and since then as well. The business of Symon Brothers is handling all kinds of building materials and wrecking of buildings. The greater portion of our business is new material. I wouldn't call what we conduct a planing mill. We purchase lumber or fabricated doors and sashes and things of that kind and resell them. We purchase them open and glaze them there.

We had some sash and doors in October, 1939, in our yard in San Francisco that we had purchased from the North. That particular time they come from either the Albany Door Company or Central Plywood Company, Central Door and Lumber Company. Albany Door Company is in Albany, Oregon; Central Door and [232] Lumber Company is located right around Portland, Oregon. Sash and doors that were on hand at that time were not from McCleary Lumber Company; they came later. I don't think we had McCleary material during October, November and December; it was largely Al-

(Testimony of S. H. McNamar.)

bany Door Company. The sash came from the same places. It didn't bear the union label. The doors from Albany Door Company did bear the Union Label. The doors from Central Door Company did bear the Union Label.

I can't say what the wage scale is for millwork in San Francisco or what it was at that time. I don't know whether or not the wage scales of the Albany Door Company and the Central Door Company for the manufacture of those doors were lower than the current scale in San Francisco. That is what Mr. Helbing reported to me. I did not investigate to verify the statement, I wasn't particularly concerned about it. I had other troubles besides that. We are not still buying from those people. We are buying now largely from McCleary Timber Company, McCleary, Washington. Albany Door Company got into financial difficulty and had to close up, then combined the Central Door and Lumber Company and opened, but during that interim we got other connections. They quit manufacturing for a while, that is all I know about it. Since then we have been buying from McCleary Lumber Company and also now buy open sash from Pacific Manufacturing Company at Santa Clara. I think that sash bears the Union Label, I am not sure. Sash purchases from McCleary did not bear the Union Label; the doors from McCleary Lumber Company would.

I don't know whether the wage scales at the McCleary Lumber Company are lower than they are

(Testimony of S. H. McNamar.)

in San Francisco. I was told, just a general statement, that the mills in the North did; they didn't define any particular ones; that ~~all~~ the mills in the North paid a lower wage scale than the mills in [233] San Francisco; that was what they claimed, I don't know anything about that or whether that was correct or not; I never investigated it. We are getting doors only from McCleary; we haven't been picketed or anything of that kind.

Cross Examination

By Mr. Tobriner:

Mr. Rickett made no statement that he represented the Building Trades Council nor that he was authorized by the Building Trades Council to be there. I don't think he made any statement that he had been authorized by the Building Trades Council to be there. He made no statement to the effect that he would place any pickets around our store.

Re-Direct Examination

By Mr. Burdell:

I did not know and wasn't concerned whether the wage scales in the Northwest were lower or higher than they are here. I was only concerned with the purchases. I can't state definitely when we began purchases from McCleary Lumber Company, but it was in 1940.

After these conversations with Mr. Helbing, Mr.

(Testimony of S. H. McNamar.)

Symon and I didn't make any more purchases. We promised those gentlemen we wouldn't purchase any more until we took it up with them. It was quite well along in 1940 before we began purchasing from the McCleary Company; I couldn't say the month; I would say the first half of 1940.

Thereupon the following stipulation was read into the record by Mr. Howland:

"It is hereby stipulated by and among the parties to this case, first, that the defendant Lumber Products Association, Inc., is a corporation duly organized and incorporated in [234] November, 1938, under and by virtue of the laws of the State of California.

"2. Defendant Wood Products Company, Inc., is a corporation duly organized and incorporated in April, 1939, under the laws of the State of California.

"3. Defendant Commercial Fixture and Store Front Institute is a corporation duly organized and incorporated in January, 1939, under and by virtue of the laws of the State of California.

"4. The following defendants are and were during the period of time covered by the indictment corporations duly organized and incorporated under the laws of the State of California, that is to say:

Acme Manufacturing Co., Inc.;

Eureka Sash, Door & Molding Mills;

Boorman Lumber Co.;

Hill Lumber & Yardware Company;

Hogan Lumber Co.;
Loop Lumber & Mill Company;
Smith Lumber Company;
Tilden Lumber Company;
E. K. Wood Lumber Company;
Zenith Mill & Lumber Company;
Eureka Mill & Lumber Co.;
Mullen Manufacturing Company;
Mangrum, Holbrook & Elkus—

“Mr. Bacigalupi: Mangrum, Holbrook & Elkus was organized on July 2, 1937.

“Mr. Howland: And has been a corporation since that time.

“Mr. Bacigalupi: It was not incorporated during the period of the indictment—they were not a corporation during the period of the indictment,

“Mr. Howland: I understand. Fink & Schindler Co.; L. & E. Emanuel, Inc.; Braas & Kuhn Company; Pacific Manufacturing Co.; Redwood Manufacturers Co.

“5. That the defendants

United Brotherhood of Carpenter and
Joiners of America,

Bay Counties District Council of Carpenters,
San Francisco Building and Construction
Trades Council, [235]

Alameda County Building and Construction
Trades Council,

United Brotherhood of Carpenters and Joiners
of America, Millmen's Union No. 42,

United Brotherhood of Carpenters and Joiners
of America, Millmen's Union No. 550,

United Brotherhood of Carpenters and Joiners
of America, Millmen's Union No. 1956,

are and each of them is a voluntary unincorporated association.

"6. That C. E. Stauffacher was president and director of Fink & Shindler Co. from 1936 to 1940, both inclusive.

"That Richard Kuhn was president of Braas & Kuhn from 1936 to 1940, both inclusive.

"That John E. Mullen was president and director of Mullen Manufacturing Co. from 1936 to 1940, both inclusive.

"That Joseph L. Emanuel was president of L. & E. Emanuel, Inc., from 1936 to 1940, both inclusive.

"That J. Gordon Ennes was secretary-manager and director of Commercial Fixture and Store Front Institute from January 19, 1939 to and through the year 1940.

"That John E. Mullen was president and director of Commercial Fixture and Store Front Institute from January 19, 1939 through 1940.

"7. That the following defendants were, during the entire period from 1936 to 1940, both inclusive, doing business under the trade name set after their respective names:

"Joseph J. Schmidt was doing business as Full-Vue Fixture Company.

"George Randolph and Herman Sichel were doing business as Exposition Woodworking Co.

"That Lee Roselyn was doing business as Uni-Built Fixture Company.

"That Henry A. Schulte was doing business as H. Schulte & Son.

"That Oscar H. Ostlund was doing business as Ostlund & [236] Johnson, from the date he started in business during the latter part of 1937 through the year 1940.

"That S. Kulcher was doing business as S. Kulcher & Co. during the period from 1936 to 1940, both inclusive.

"We have a further stipulation with counsel for the defendant Labor Union's to the following effect:

"That the defendant J. F. Cambiano was an organizer of the United Brotherhood of Carpenters & Joiners of America from May 3, 1937, up to the present time.

"That the defendant D. H. Ryan was Secretary of Bay Counties District Council of Carpenters from September, 1927, up till the present time.

"That defendant James Ricketts was business representative of the San Francisco Building & Construction Trades Council from November 1, 1936, to June 27, 1940.

"That defendant Charles Rowe was assistant business representative of the Alameda County Building & Construction Trades Council from March 28, 1939 to date.

"That defendant Charles Helbing was business agent of Millmen's Local Union 42 from August 1, 1935 to September 18, 1936, and from January 3, 1939 to July 2, 1940.

"That defendant D. J. Edwards was president of Millmen's Local Union 42 from July 1, 1936 to July 6, 1937.

"That defendant W. P. Kelly was president of Millmen's Local Union 42 from July 6, 1937 to July 8, 1938.

"That defendant H. Lidley was president of Millmen's Local Union 42 from August 23, 1938 to July 11, 1939.

"That defendant W. L. Wilcox was president of Millmen's Local Union 42 from July 11, 1939 to July 2, 1940, and was business agent of the same union from July 5, 1938 to July 11, 1939.

"That defendant Walter O'Leary was business agent of Millmen's Local Union 550 from July 11, 1935 to July 1, 1940. [237]

"That defendant M. D. Cicinato was president of Millmen's Local Union No. 550 from July 1, 1937 to July 1, 1938.

"That defendant J. P. Shelden was president of Millmen's Local Union No. 550 from July 11, 1935 to July 3, 1936.

"That defendant G. H. Irish was president of Millmen's Local Union No. 550 from July 1, 1939 to July 1, 1940.

"That defendant Otto W. Sammet was on the Negotiating Committee of Millmen's Local Union 42 from February 26, 1936 to September 21, 1936.

"That Emil H. Ovenberg was on the Negotiating Committee of Millmen's Local Union 550 from February 26, 1936 to September 21, 1936."

JAMES STEWART,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

I am manager for Symon Brothers Oakland Plant, located 22nd Avenue and East Fourteenth, Oakland. The business of that plant is wreckers and new and used building material supplies, including millwork. My duties are to buy all materials and operate the plant. I have held the position seven (7) years. I know Mr. Walter O'Leary; it was about 1938 when I first met him. I had a conversation with him in the early part or beginning of 1938, in my office. Mr. O'Leary and myself were present; I would say it was March or April. He came in and said, "I am O'Leary; I am Business Agent of the Mill Workers Union." At that time he came in with a union agreement to be signed and I told him I had no power to sign any agreement, that was something Mr. Symon would have to sign himself. One of the powers I did not have was to make any agreement binding the company. He left the agreement and said he would return for it, to have Mr. Symon sign it and he would pick it up. He returned a few [238] days later and picked up the agreement. I had had the agreement signed. I asked Mr. O'Leary a few questions on the contents of the agreement. One was in regard to bringing doors and windows and sash from the Northwest, where we had been accustomed to buy it. I asked him if the agreement

(Testimony of James Stewart.)

meant that we could not bring any more stuff from the Northwest, and he said, "Yes, it means just what it says there; you cannot buy from the Northwest any more, you have to buy it locally." I asked him where I had to buy locally and he said—he named five (5) different mills, "You can take your pick from those five."

The names of the five (5) mills were Pacific Manufacturing at Santa Clara; Redwood Manufacturing Company at Pittsburg; Western Sash and Door at Oakland; Eureka, here in San Francisco, and Boorman Lumber Company in Oakland. I asked Mr. O'Leary if I brought merchandise in that bore a Union Label, other than made here, what would happen. He told me they would picket the place, that we could not bring anything in that was not made in the five counties. That was all the conversation at the particular time.

Mr. O'Leary was in the habit of coming in the yard and going over the stuff about every month or six weeks, seeing if we had any merchandise in there that was without a Union Labor Label. On one particular occasion I had a conversation with him. I walked out into the yard and saw Mr. O'Leary and three other gentlemen and walked up and said, "What can we do for you?" He said, "I have got a tip that you have got some hot stock." It was the latter part of 1938, around November, just before the rainy season. He said he had heard we had hot stuff in the yard and he wanted to see

(Testimony of James Stewart.)

if we had it, and he had a number of other business agents from different unions out with him, in case he found it they would know what to do then. Nothing further was said; they did not find anything to my knowledge because nothing was done at that particular time. [239]

Prior to that time we had been purchasing our millwork from Central Sash and Door Company and Albany Sash and Door Company, in Oregon or Washington. I think Albany Sash and Door Company is in Oregon; we purchased from their salesman, Mr. Peel. Central Sash and Door and Plywood Company,—it might be Central Door and Plywood Company, is located in Oregon; we got it through the same salesman. We had been purchasing sash, windows and doors from those mill companies. I know the doors bore the Union Label; I do not think the sash bore the Union Label nor the windows; just the doors, as I remember. We did not continue to purchase from the Central Door and Plywood Company or the Albany Door and Sash Company. He said I could not do so; if I continued to purchase from them he would immediately picket the place, close us up on a picket line, that I had to buy from the five county mills that he designated. I did not purchase anything further from those companies. I do not recall the exact price paid for doors and sash from Central Door and Plywood Company, but the price list that was established we would get a discount on from

(Testimony of James Stewart.)

78 to 82 on sash and doors. After I ceased purchasing from those companies I checked around and tried to purchase doors and sash in Oakland. They only gave us five companies that he designated I could purchase from and they would only give us 50 per cent. discount off the same list, and I was not able to put an order on the market at such a price because any contractor could go in and get the same price. I went without a lot of it. We didn't cease dealing in any particular article; we had a big enough stock, but that stock dwindled down to nothing. We have recently made purchases of doors and sash from Pacific Manufacturing Company of Santa Clara.

"In addition to this conversation that you had with Mr. O'Leary did you have any further conversations at all with Mr. O'Leary? [240]

"A. One day I had placed an order through our buyer in San Francisco with an outfit to get in a lot of sash and doors so we could have a surplus stock, and he placed the order and told me that the mills would deliver it on such and such a date, and I received a telephone call stating that it had been heard that I had purchased merchandise coming in other than from the five counties.

"Q. Just a moment, do you recall when this telephone call occurred?

"A. In the morning, but not what date.

"Mr. Routzohn: We object unless this telephone call was with one of the defendants or somebody connected with the defendants.

(Testimony of James Stewart.)

"Mr. Burdell: I have not asked for the conversation.

"Q. Do you know who called?

"A. The party on the other end of the line said they were from the Mill Workers' Union on Webster Street, in Oakland—Mill Workers' Union, I won't say Webster street. He said that he represented the Mill Workers' Union and had understood that we had a car of sash—

"Mr. Routzohn: I object to that.

"The Court: Overruled.

"Mr. Routzohn: We are objecting on the ground that there is nothing there to show that it was somebody from the Union, it is merely a telephone conversation.

"The Court: Q. Was it a man who represented himself to be a representative of the Union?

"A. He did.

"The Court: Overruled.

"Mr. Burdell: Q. What was the conversation, Mr. Stewart?

"Mr. Routzohn: When?

"Mr. Burdell: Q. When did this telephone conversation occur?

"A. In the early part of 1939, when I ordered these through Mr. McNamar. [241]

"Q. Do you recall the month?

"A. No, I do not.

"Q. What was the conversation?

"A. This party called up and represented himself to me as someone from the Union in Oak-

(Testimony of James Stewart.)

land, and stated that they had heard we had placed an order with an out-of-the-five-counties mill, and if they came in they would immediately picket our place, and not to bring it in to save ourselves any trouble.

"Q. Was there any further conversation on the phone?

"A. Not with that party, except, well, I did say, 'What are you talking about?' And they said, 'You know what I am talking about.'

"Q. Is that all? A. That was all.

"Q. What did you do?

"A. I called up Mr. McNamar and told him to cancel this order.

"Mr. Routzohn: We object to what he did with Mr. McNamar.

"The Court: Overruled.

"Q. I told Mr. McNamar to cancel the order with the company that he had ordered the sash and doors, that the Union had heard of it and prohibited us from taking it or they would picket us.

"Mr. Routzohn: We ask that the conversation be stricken out and the jury instructed not to regard it, and to pay no attention to it.

"The Court: Denied."

Cross Examination

By Mr. Routzohn:

On that particular order in 1939, I had conversed with Mr. McNamar on it, and the salesman

(Testimony of James Stewart.)

that had taken the order did not give me the name of the mill. The order was placed with a Mr. Wixon, with the Nicolai Sash and Door Company. I thought it was Wixon, I may be mistaken. Mr. McNamar had placed the order. All I know is that Nicolai Sash and Door Company was located [242] somewhere in San Francisco. The order was to come up from some mill around Los Angeles; that is all the salesman would tell me. That did not go through because it was cancelled. It was not cancelled because it was a non-union mill. It was to bear the Union Label. I know it was to bear the Union Label because when I was talking to this man that I didn't know exactly how to spell his name, I asked that particular salesman and he said, "Yes." He told me that it would bear the Union Label.

I don't know what wage the Nicolai Sash & Door Company pays. The Nicolai Sash & Door Company is a San Francisco concern. It is a mill, but it was purchasing these doors which we were purchasing from a Los Angeles concern. I don't know what the wage scale was down there.

I do not personally have a copy of the agreement Mr. Symon signed. I imagine we may have one in the file in Oakland, or there may be one here. I am positive Mr. Symon did sign an agreement in the early part of 1938, and I delivered that signed agreement to Mr. O'Leary. I read over the agreement myself. There was a list of exemptions and there

(Testimony of James Stewart.)

was a list of materials that were not exempted in this agreement. There was not anything stated in that agreement particularly about the five counties. All I know is that Mr. O'Leary came in and told me I could purchase my sash, doors and windows from these five (5) mills he listed. He said there were five counties and he gave me the names of five different mills I could purchase from. It is one agreement we are talking about and that is supposed to be the 1938 agreement.

I did not know there was an award made by Board of Arbitration in 1938, fixing prices in a six-county district. I heard nothing about any arbitration as to a wage scale in 1938. I believe we had a copy of that contract. The copy was given back, signed by Mr. Symon, the other copy was retained [243] by us. I don't recall whether we still have it or not, it might have been thrown out. They were all typed copies. Mr. Symon signed both of them so I could give Mr. O'Leary one. I haven't looked for the copy; it should be in the office in Oakland.

Cross-Examination

By Mr. Faulkner:

I recall the incident I related of the proposed purchase from the Nicolai Door Company, that was the early part of 1939. To the best of my knowledge, the business of that company is a sash and door company, in San Francisco. I had no prior dealings with them and I had no direct dealings with them then.

(Testimony of James Stewart.)

My knowledge of where they got the merchandise *that supplied* was just that this salesman stated it was coming from a Los Angeles mill. This was the early part of 1939. We cancelled out the carload.

"Mr. Burdell: If the Court please, at this time I desire to offer in evidence the minutes of Millmen's Union No. 42 of November 14, 1939. That is Government's Exhibit for identification No. 6.

"Mr. Routzohn: If the Court please, we would like to have an understanding and a stipulation in connection with the offering of the minutes, and that is that the Government produce these minutes and offer them as a whole, and then the Government will be permitted to read into the record and to the jury as much out of those minutes as it desires to read, granting to us the privilege to also read at the same time any excerpts from the minutes that we may desire to read into the record before the jury.

"The Court: I thought that was understood.

"Mr. Faulkner: That related solely to the minutes of the corporations, which were offered only against the corporations. [244]

"The Court: Well, I think it is proper you should have a stipulation of that kind.

"Mr. Burdell: Well, of course, subject to the usual objections with regard to relevancy.

"The Court: Yes.

"Mr. Burdell: And declarations.

"The Court: Yes. Well, both sides are subject to any objection anybody wishes to make concerning them.

"Mr. Faulkner: Well, we thought the minutes, your Honor, show a course of conduct not over a period of time mentioned in the indictment.

"The Court: Let's not waste time in arguing over this. We are moving very slowly in this case. We should move faster. There isn't any reason why those minutes should not be permitted in evidence. There isn't any reason the Government should not read from any minutes such portion that it wishes to read to the jury, and I can't see any reason why the defense likewise should not read such portions as they desire. That is subject to any objection.

"Mr. Faulkner: We would like to make this general objection to those minutes——

"The Court: Well, nothing has been offered yet.

"Mr. Faulkner: He offered the minutes of November——

"The Court: Very well.

"Mr. Faulkner: Our objections, your Honor, to the minutes are that they are not the minutes that are required to be kept by a statute, and only the minutes of a union, they are not the act or declaration of a conspirator during the course of a conspiracy. They are, therefore, hearsay as to the defendants, and they purport to show the opinion and conclusion of a secretary of what happened in his presence and it deprives the defendants who are not members of the union the right of being [245] confronted by witnesses and the right of cross examination. It is hearsay as to them in the event it is offered as to us.

"The Court: You have stated your objection. Have you finished it?

"Mr. Faulkner: Yes. Hearsay.

"The Court: Overruled. It is understood that the minutes you are offering now in evidence, the entire minute book.

"Mr. Burdell: Yes.

"The Court: Admitted in evidence. I understand you are going to read certain portions?

"Mr. Burdell: That's right.

"The Court: And if you do wish to read certain portions, you may do so.

"Mr. Routzohn: May I reserve the right to read them at some subsequent time before the Government rests, your Honor?

"The Court: Yes.

("The minutes of Local 42 were marked "U. S. Exhibit No. 6.")

"Mr. Faulkner: Our objection may go to every minute read—

"The Court: Yes.

"Mr. Burdell: I am reading from the minutes of November 14, 1939.

"The Court: What page?

"Mr. Burdell: These pages are not numbered, your Honor. I am reading from the second page of the November 14, 1939, minutes.

"The Court: What organization or association?

"Mr. Burdell: Millmen's Local No. 42.

"The Court: Proceed.

"Mr. Burdell: 'Beronio Lumber Co. has order for 265,000 feet of T and G for the Cow Palace. Told all parties [246] concerned this material will have to be run in San Francisco. Brother Kelly stated Symon Bros. Wreckers received two carloads of trim."

"Now, if the Court please, I desire to read from the minutes of the meeting of November 21, 1939;

"B. A. Helbing: Report saying to hold the 260,000 feet of 2 by 6 T and G for the Cow Palace. Have been contacting Sacramento in regard to this work. Case of Brother Carbone before Industrial Accident Commission; know by Saturday the amount the brother is to receive. Reported on the State Teachers College. P. W. A. money, and may take many years to build this college. Brother Kelly stated bids on the Outer Mission School were thrown out and the new bids will be opened November 29, 1939."

"Mr. Faulkner: I ask that all go out as not material.

"The Court: Denied.

"Mr. Burdell: If the Court please, I desire to read the minutes of November 28, 1939:

"B. A. Helbing reported he notified the Hobbs-Wall Company that the two brothers working there will have to receive the scale. Carload of millwork for Smith in Daly City and Nelson on Ocean Avenue without the label. Smith agreed to go along. Buckley received about 15,000 feet of molding from

a plant in San Jose without the label. Told to send this stuff back or have it rerun. Local No. 262 was notified and placed a picket on this job. Symon Bros. Wreckers received two earloads of unfair material. Asked these people to go along with the program and refused. Recommends that Symons be placed on the unfair list."

"I am still reading from the minutes of November 28, but the next page:

"'Moved and seconded'—that should be 'M&S. Symons be [247] placed on the unfair list. Carried. Secretary to notify District Council.'

"Now, if the Court please, I desire to read from the minutes of December 5, 1939:

"'Building Trades Council Delegate reported Symon Bros. will be cited to appear before the Executive Board. Executive Board Brother Westby stated about Symon Bros. Wreckers. B. A. Helbing reported the case of Hobbs-Wall was before the Conference Board and these brothers have worked for these people ten or fifteen years.'

"That is all I desire to read at this time, your Honor.

"Mr. Faulkner: I move to strike it all out, your Honor, as immaterial.

"The Court: Denied."

Thereupon the 1936 contract was received in evidence, marked "U. S. Exhibit 131", with stipulations that the signatures were genuine and the 1938 was

received in evidence, marked "Exhibit U. S. 132", with the same stipulation.

Thereupon Mr. Burdell read the 1936 contract, "Exhibit 132", as follows:

"Mr. Burdell: 'Employer-Employee Agreement of Wages, Hours and Working Conditions.

" '1. This Agreement is a voluntary Agreement entered into in good faith by all parties who stipulate that they have full authority to bind themselves or their organizations to the term hereof.

" '2. On and after June 28, 1936, the minimum wage scale for Journeymen Cabinet Makers, Bench Hands and Millmen employed in the operation of woodworking machinery will be Ninety-two and one-half ($92\frac{1}{2}c$) cents per hour, except in the manufacture of stock sash and doors, in the manufacture of which the minimum wage scale of Eighty-two and one-half ($82\frac{1}{2}c$) cents per hour will apply. Stock sash and doors shall consist of such items [248] as are listed as stock by the Northern California Wholesale Sash and Door Association.

" 'On and after March 15, 1937 the above mentioned minimum wage scale will be One (\$1.00) Dollar per hour and Ninety (90c) cents per hour respectively.

" '3. Eight hours shall constitute a regular work day. The regular work day shall be between 8:00 A. M. and 5:00 P. M. Five (5) days shall constitute a regular working week from Monday of Friday inclusive.

“4. The rate of wage for overtime work shall be as follows: For the first four hours work after the first eight hours work, time and one-half. All overtime work thereafter shall be paid for at the rate of double time. Work on Saturdays, Sundays and holidays from 12 midnight of the preceding day shall be paid for at the rate of double time, except that work on Saturday from 8:00 A. M. to 12:00 M. shall be paid for at the rate of time and one-half.

“Recognized Holidays are New Year's Day, Decoration Day, Fourth of July, Labor Day, Admission Day, Thanksgiving Day and Christmas.

“5. When two (2) shifts are worked in any twenty-four (24) hour period, straight time shall be paid. When three (3) shifts are worked eight (8) hours shall be paid for seven (7) hours work.

“6. Working foremen or working Superintendents shall become members of the Union.

“7. Employers or Firm Members, that is, those having direct interest in the business and working with tools of the trade shall become members of the Union, excepting that any firm may have one (1) member of the firm working with the tools not a member of the Union.

“8. An apprentice shall be not less than eighteen (18) [249] years of age and not over twenty-two (22) years of age when starting his apprenticeship. He shall undergo a course of training for four (4) years.

“The minimum rate of wage shall be:

	per diem
For first three months	\$2.00
After three months	2.50
After six months	3.00
After twelve months	3.50
After eighteen months	4.00
After twenty-four months	4.50
After thirty months	5.00
After thirty-six months	6.00
After forty-two months	7.00
After forty-eight months	Journeymen's Rate

“9. An apprentice, after having served an apprenticeship of two (2) months shall become a member of the Union.

“10. The employment of apprentices shall not exceed one (1) apprentice to every four (4) or major fraction thereof of Journeymen Millmen and Cabinet Makers combined. Handicapped workers shall not be included in this computation. In any event, the number of apprentices, at the option of the Employer, may be at the above ratio when based on the number of journeymen employed during the preceding twelve months period.

“11. There shall be no limitation of the Employer as to whom he shall employ or discharge, excepting that any working Foreman, Working Superintendent, Journeyman Millman or Cabinet Maker employed shall be or shall within thirty (30)

days, and apprentices within two (2) months, become members of the Millmen's or Carpenters' Union.

"12. A person who is incapacitated by age, physical or mental handicaps, or other infirmities, may be employed at an hourly rate of wage below the minimum established by this Agreement, provided he shall first have obtained a written dispensation from his Union.

"13. A person having temporary disabilities may be [250] employed at an hourly rate of wage below the minimum established by this Agreement, provided he shall first have obtained a written dispensation from his Union.

"14. Millwright work, consisting of installing of additional equipment and the maintenance of equipment, may be done at the convenience of the employer. The rate of wage for such work shall be the regular rate of wage of employees when employed on production, except that the rate of wage shall be the straight time rate without regard to the period or length of time employed on such millwright work or the day.

"15. The Shop Steward may make himself known to the Employer.

"16. In the interest of standardization of rates of wages and working conditions, it is agreed that no material will be purchased from, and no work will be done on any material or articles that has had any operation performed on same by Saw Mills, Mills

or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase of and the working of the following products is excepted:

•• Dowels

Panel Stock

Stock Panel

Veneers.

Machine Carved, Pressed or

Embossed Moldings

Pine, Redwood and Philippine

Mahogany Doors

1 Panel

10 Light or French

5 Cross Panel

1 Light Panel

1 Light 3 Panel

6 Light 6 Panel

Pine Garage Doors

2 Light Windows

Lumber, rough or surfaced

Sheathing surfaced

Flooring [251]

Siding and Clapboards

Stepping

T & G

•• Nothing herein is to be interpreted as preventing the entire production and sale of any articles in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any

business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws.

•••17. No Millman or Cabinet Maker, a member of the Millmen's Union shall work in any Cabinet Shop, Planing Mill or elsewhere in the City and County of San Francisco, or in the Counties of Alameda, Contra Costa, Marin or San Mateo in the capacity of a Millman, Cabinet Maker or Carpenter, unless the Planing Mill or Cabinet Shop in which he is working be entitled to use the Union Label, or if working as a carpenter, the items he erects or installs be the products of a Planing Mill or Cabinet Shop entitled to use the Union Label.

•••18. When any Cabinet Maker, Bench Hand or Millman, performs any work at the building site, the minimum scale of wages and other conditions shall conform to the Carpenters' scale as set up by the United Brotherhood of Carpenters and Joiners of America. Under any circumstances, the minimum scale paid for such outside work shall not be less than the minimum shop scale.

•••19. The Union shall advise the Trade Associations of the Counties of San Francisco, Alameda, Contra Costa, Marin or San Mateo parties to this Agreement, of the proposed issuing of all Union Stamps or Labels prior to issuing same in the Trade Associations' respective Counties.

“20. In order to bring about general recognition of these ‘Wages, Hours & Working Conditions’, an Employer-Employees [252] Bay Counties Wood Products Labor Conference Committee shall be set up, consisting of eight (8) members, four (4) to be appointed by the Employers and four (4) to be appointed by the Employees, who shall:

- (a) Establish the general recognition and enforce the wages, hours and working conditions of this Agreement.
- (b) Hear and adjust disputes or differences that may arise in the enforcement or interpretation of this Agreement.
- (c) Promote the mutual interests of the parties to this Agreement, and the Building Industry generally.

“21. Seven (7) shall constitute a quorum to render a decision provided at least three (3) representing Employees shall be present.

“22. A decision may be rendered and become effective upon a majority vote, provided that no less than three (3) representatives of the Employers and three (3) representatives of the Employees vote with the majority.

“23. It is agreed that pending the decision of the Committee, neither party to this Agreement will take any action that will in any way delay or interrupt the orderly conduct of the business interests herein represented.

“24. This Agreement shall remain in effect for a period not less than two (2) years from June 15,

1936, and shall continue to remain in full force and effect thereafter. It shall be subject to change, modification or termination after the above period by either party upon sixty (60) days notice being served in writing upon the other party, and further excepting that the period of two (2) years may be extended by mutual agreement. [253]

“25. The work in progress and work for which contracts have been entered into or proposals submitted prior to June 27, 1936, shall be completed at the wage rates existing in plants at that time. This work is to be certified by a Committee having one (1) representative each for the respective Employers Associations and Employees.

This Committee is hereby authorized when they deem it advisable, and where agreeable to the specific shop, to determine a date on which the new rate is to become effective, or to determine the number of man hours that may be employed under the old rate before the new rate becomes effective.

“26. Business Agents of the Millmen's Union shall have free access to all shops during working hours at their own risk.

Dated: San Francisco, California, Sept. 21, 1936.

“UNITED BROTHERHOOD OF JOINERS &
CARPENTERS OF AMERICA

MILLMEN'S UNION NO. 42 and 550

WILLIAM P. KELLY

EMIL H. OVENBERG.

OTTO W. SAMMET.

W. C. O'LEARY

**BAY COUNTIES DISTRICT COUNCIL
OF CARPENTERS**

D. H. RYAN

**LUMBER PRODUCTS ASSOCIATION
OF SAN FRANCISCO**

J. G. HART

**EAST BAY MILL OWNERS
ASSOCIATION**

D. X. EDWARDS

BUILT IN FIXTURE MANUFACTURERS

.....
**CABINET MANUFACTURERS INSTI-
TUTE OF CALIFORNIA,
NORTHERN DIVISION**

J. G. ENNES, Mgr.' "

Thereupon Mr. Burdell read from the Agreement commonly referred to as the 1938 Contract, "Government's Exhibit 132", as follows: [254]

"Mr. Burdell: This Government's Exhibit 132: 'Employer-Employees' Agreement of Wages, Hours and Working Conditions.

"1. This Agreement is a negotiated and arbitrated Agreement entered into in good faith by all parties who are signatories hereto and who stipulate that they have full authority to bind their organizations to the terms hereof.

"2. It is fitting that the wording of the Arbitration Board be here quoted and its purpose and intent be and is made a part of this Agreement:

'Maintenance of Fair Labor Conditions: It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interest of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement.'

"I desire now to read paragraph 17:

"'In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase, working and sales of the following products is expected:

'Dowels, Pannel Stock, Stock Plywood Pannel, Veneers, Machine Carved, Pressed or Embossed Mouldings, Lumber, rough or surfaced, Sheathing surfaced, Rustic and Clapboard, Stepping, Flooring 13/16 x 3—13/16 x 4—13/16 x 6 11/8 x 4, Douglas Fir—T&GV or T&GV&CV—3/8 x 4 3/4 x 4—5/8 x 4 3/4 x 6, Redwood T&GVIS—Bead 1S 3/4 x 4—3/4 x 6.

"'18. The purchase and sale of the following products is excepted: Pine, Redwood & Philippine

Mahogany Doors, 1 Pannel, 10 Light or French,
5 Cross Pannel, 1 Light 1 Pannel, 1 Light 3 Pannel,
Pine Garage Doors—6 Light 6 Pannel.

“Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed [255] state to any Buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission or the Sherman Anti-Trust Laws.’

“Paragraph 28: ‘This Agreement shall remain in effect for a period from June 15, 1938 to May 1, 1939, and shall continue to remain in full force and effect thereafter. It shall be subject to change, modification or termination after May 1 of any year, by either party upon notice being served in writing upon the other party between the period of January 1 and February 1 of any year, and further excepting that the period of June 15, 1938 to May 1, 1939, may at any time be extended by the mutual consent of all the signatories hereto.’

“It is dated, San Francisco, California; the date line is blank. It is signed by:

United Brotherhood of Carpenters & Joiners of America

Millmen's Union No. 42, William P. Kelly,
W. L. Wilcox, A. M. Edwards;

United Brotherhood of Carpenters & Joiners of America

Millmen's Union No. 550, W. C. O'Leary,
Emil H. Ovenberg, C. H. Irish;
Bay Counties District Council of Carpenters,
D. H. Ryan;

Lumber Products Association Inc., Carl War-
den, J. A. Hart;

Cabinet Manufacturers Institute of Califor-
nia Inc., Northern Division, J. G. Ennes, Man-
ager;

Stair Builders Association San Francisco
Bay Counties, by P. O. Lind."

Thereupon Exhibit for identification 114-17 was
received in evidence with the stipulation as to Mr.
Ennes' signature and marked "U. S. Exhibit No.
133."

"Mr. Burdell: I desire to read the letter. It is
on the letterhead of the Cabinet Manufacturers In-
stitute of [256] California, Northern Division, 74
New Montgomery Street, San Francisco, California,
Telephone Exbrook 5382.

"December 19, 1938

United Brotherhood of Carpenters & Joiners
of America

Millmen's Union No. 42,
200 Guerrero Street,
San Francisco

Gentlemen:

"Our shops are operated under the terms of
a negotiated and arbitrated Agreement which

Agreement was subsequently modified at the suggestion of your International Officers, your Local representatives being present, and concurred in by us in the following language:

“ ‘Agreement Modifying Employer-Employee Agreement of Wages, Hours & Working Conditions

“ ‘The memorandum as to payment of wages, established by arbitration effective next Pay Day, dated August, 1938 is hereby made void.

“ ‘The rate of wages as established by Employer-Employee Agreement effective June 15, 1938, is hereby modified as follows:

“ ‘Effective October 18, 1938, inclusive, wherever the Journeyman rate of wage of One Dollar and twelve and one-half ($\$1.12\frac{1}{2}$) cents per hour and One Dollar ($\$1.00$) per hour appears, said rates shall be One Dollar and Six and one-quarter ($\$1.06\frac{1}{4}$) cents per hour and Ninety-six and one-quarter ($.96\frac{1}{4}$) cents per hour respectively.

“ ‘The rates of wage of Apprentices shall be changed to:

(a) In the first year:

for the first 3 months	\$2.00
for the second 3 months	2.50
for the last 6 months	3.00

(b) In the second year:

for the first 6 months	3.50
for the last 6 months	4.25

- (c) In the third year:
for the first 6 months \$5.00
for the last 6 months 5.75
- (d) In the fourth year:
for the first 6 months 6.50
for the last 6 months 7.50
- (e) After the fourth year the Journeyman's minimum rate of wage shall apply.

“Paragraph 17 is changed by mutual agreement to read as follows:

“17. In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto.

The purchase working and sales of the following products is excepted:

Dowels, Flooring 13/16 x 3—13/16 x 4, 13/16 x 6—1 1/8 x 4, Fir-T&GV or T&GV&CV 3/8 x 4—3/4 x 4 5/8 x 4—Bead 1S 3/4 x 4 T&GVIS—Bead 1S 3/4 x 4 3/4 x 6, Pannel Stock, Stock Plywood, Pannel, Veneers; Machine Carved, pressed or Embossed Mouldings Redwood Lumber, rough or surfaced, Rustic & Clapboard, Stepping, Sheathing surfaced.

“The purchase and sale of the following products is excepted:

“Pine, Redwood and Philippine Mahogany Doors.

1 Pannel, 10 Light or French, 5 Cross Pannel, 1 Light 1 Pannel, 1 Light 3 Pannel, Pine Garage Doors—6 Light 6 Pannel.

“ ‘Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any Buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of any inter-state common carrier, or any regulations of [258] the Federal Trade Commission, or the Sherman Anti-Trust Laws.

“ ‘With reference to the San Francisco signators: Such pay-rolls in the hands of Employers over and above such offsets claimed under the terms of the award are to be given to the Union representative upon demand and receipt.

“ ‘Unendorsed check is to be given to the Union representative upon endorsement or written order of the Employee in whose name the check is drawn and receipt by the Union.

“ ‘Such unsatisfied offsets due the Employer that exist after the application of checks endorsed to the Employer shall be paid by the Union not later than the completion of the job on which the offset is due.

“ ‘It is to be confirmed by the International of the United Brotherhood of Carpenters and Joiners of America that they will not approve any agreements entered into between the Employers and the local Unions under their jurisdiction in the Counties of San Francisco, Alameda, Contra Costa, Marin, San Mateo and Santa Clara unless said agree-

ments be uniform with respect to rates of wage, hours and working conditions.'

"In spite of the affixed signatures and statements of those who asserted and we believed to represent you, we have heard that there exists some question as to **Organized Labor** having followed the proper procedure with respect to the contracts.

"We are hopeful that the long established confidence we have in your organization and its officers will continue to obtain. So there can be no misunderstanding arise, please advise us in the premises.

Very truly yours,

**CABINET MANUFACTURERS
INSTITUTE OF CALIFOR-
NIA, INC., NORTHERN DI-
VISION**

By **J. G. ENNES, Manager
LUMBER PRODUCTS ASSO-
CIATION INC.**

By **H. W. GAETJEN.' "** [259]

CLEMENTINE S. RENNIE,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am retired; my previous occupation was Public Stenographer with office at 407 Call Building. I

(Testimony of Clementine S. Rennie.)

know Mr. John Gordon Ennes. I met him in the course of my work and did work for him. He had an office on the same floor of the Call Building. I worked for him between 1935 and 1939, I think the last was in February, 1939, it was mostly copy work. I typed Government Exhibits No. 134 for identification for Mr. Ennes at his direction. It was received in evidence as "U S. Exhibit 134" over the objection that it was hearsay, incompetent, irrelevant and immaterial.

Cross-Examination

By Mr. Faulkner:

I cannot state definitely when the paper was typewritten; it was during the period that I worked for Mr. Ennes. I remember it was something I typed for him.

HAWLEY E. STRONG,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

I am a Public Accountant; I work for Pacific Coast Labor Bureau in the auditing department; I audit labor union accounts and make analysis of the account of the employers' books. [260] I did auditing work for Millmen's Union No. 42 in the Fall of 1936.

(Testimony of Hawley E. Strong.)

"Q. Tell the jury the occasion of your being employed through the Pacific Coast Labor Bureau to do auditing.

"Mr. Faulkner: We object as hearsay and not within the issues of the case; incompetent, irrelevant and immaterial.

"The Court: Overruled.

"The Witness: May I ask for the question?

"The Court: Read the question.

(Question read.)

"Mr. Faulkner: And hearsay.

"A. Well, the unions and the employers had a contract which was entered into and which gave an increase in the rate of wages as of a certain date, but it was further provided that any work that an employer had that he had signed up for on that date was to be finished at the old rate of wages, which meant the effective date of the agreement would be different in every plant, probably, and it was therefore necessary to determine the work that an employer had on hand. I was called in to examine the books of the employers to determine the work that was on hand and to estimate how long their work would take."

I was called by Mr. Edwards, the business agent of the Union. Mr. Edwards explained what the type of work would be; to go around to the different employers and make this check that I have described. Mr. Edwards was referred to as "Shorty"; Al, I think was the first name. I received a copy

(Testimony of Hawley E. Strong.)

of the agreement under which we were working, document marked "135, for identification", is the document. Thereupon the agreement was received in evidence, marked "U. S. Exhibit No. 135". We started the work of checking the various mills. Mr. Edwards was present for the Union, and Mr. Ennes for Cabinet Employers Association. I know Mr. Ennes, I see him sitting yonder. We called on the [261] employers and asked for orders they had on hand, effective this particular date; and checked the orders and determined how long it would take to complete them. Mr. Ennes looked out for the interest of the employers. He would introduce me as the auditor employed by the Union with the acceptance of the Employers Association, to check the books against the date of the contract.

"U. S. Exhibit No. 136" is an accurate list of the Cabinet Makers upon whom I called and was made about the time I made the calls with Mr. Ennes. I think that we called with Mr. Ennes on all, with the exception of the first one, Fenesky. I haven't a distinct recollection. Mr. Ennes was there at Brandlein; I have in the case of Royal Show Case Company.

The following are companies, reading from the list, that I called on in the presence of Mr. Ennes:

"A. H. Schulke & Son, Exposition Wood-working Company, Brandlein, William Bateman, Ostlund & Johnson, Ful-Vue Fixture Company, Mullen Manufacturing Company,

(Testimony of Hawley E. Strong.)


Mangrum-Holbrook Company, Royal Showcase Company, Fink & Schindler, L. & E. Emanuel, Erik G. Ernstam—and Brass & Kuhn.”

I omitted the first name from the list, that was the one that Mr. Ennes did not attend. When I called the employers produced their records that we were interested in for the certain date, and we made our calculations from those jobs. Mr. Ennes and Mr. Edwards looked out for the interests of their respective groups as to dates and amount of money involved to complete those orders. They remained with me most of the time. I again checked records of employers in San Francisco at the instance of Local 42 and the same Mr. Edwards in the Fall of 1938.

Government's Exhibit No. 134 is a typewritten list of the mills furnished, I believe, by Mr. Edwards. I called on each employer on the list, which reads as follows: William Bateman, [262]

“Braas & Kuhn Company, Brandlein & Company, L. & E. Emanuel, Inc., Exposition Woodworking Company, Fink & Schindler Company, Ful-Vue Fixture Company, S. Kulcher Company, Mangrum, Holbrook & Elkus, Mullen Manufacturing Company, Ostlund & Johnson, Royal Showcase and Fixture Company, H. Schulte & Son, Unit Bilt Fixture Company.”

That is the entire list of names that is on the exhibit. We also called on employers who were mem-



(Testimony of Hawley E. Strong.)

bers of Lumber Products Association. I have a list of that group furnished by Mr. Edwards or his office. List marked "U. S. Exhibit No. 137" was then introduced in evidence over the objection that it was incompetent, irrelevant, immaterial and hearsay as to defendants.

We called on all the employers on that list, reading: "Liberty Mill, Sage & Wilder, Central Mill and Cabinet Shop, Anderson Brothers, California Mill, Eureka Sash, Door and Molding Mill, J. A. Hart Mill and Lumber Company, Herring & Nutting, H. Karp & Son, Warden Brothers, Portman Planing Mill, Erickson & Wagner, Empire Mill, Button's Planing Mill."

We followed the same routine in 1938 as described in 1936, except in this case, instead of finishing the work they had, the wage increase was given immediately and the Union refunded to the Employers to cover amount of work that was done after that date that they had on hand. Mr. Ennes did not go with me in 1938, Mr. Edwards went with me part of the time and Mr. Wilcox, who is in the Court room part of the time. I made my report of the audit for 1938 to Millmen's Union No. 42. Government's "Exhibit No. 138", for identification, is a copy of the report made out by myself. I think that is the final report.

"Mr. Clark: We offer it, your Honor.

"Mr. Faulkner: We object as incompetent, irrelevant [263] and immaterial, and upon the further

(Testimony of Hawley E. Strong.)

ground the proper foundation has not been laid in this: that that purports to be a resume of books and records, and under the ruling of the Circuit Court in the Wilkie case, a resume is admissible in evidence only if the books from which is prepared are first introduced in evidence.

"The Court: Overruled.

"Mr. Faulkner: Hearsay as to the defendants.

"The Court: Overruled.

(The audit report was marked "U. S. Exhibit No. 138.")

"Mr. Clark: Exhibit No. 138 is dated:

"November 3, 1938

**"TO THE OFFICERS AND MEMBERS
OF MILLMEN'S UNION LOCAL NO. 42:**

"We have audited the employers claims for protection on old work in accordance with the agreement between the Cabinet Manufacturers Institute of California, Northern Division and Lumber Products Association, Inc. and the Bay Counties, District Council of Carpenters, Millmen's Union No. 42 of San Francisco and Millmen's Union No. 550 of Oakland and herewith submit out report.

"Summary

Number of Employers Audited

.68

Amount of Work on which Protection Claimed by Employers

\$1,007,320.69

Amount of Reimbursement

(Testimony of Hawley E. Strong.)

Claimed by Employers based on Old Work	\$35,104.71
Amount of Reimbursement Agreed to by Union Following Audit	19,890.69
Amount of Reimbursements Claimed Still in Dispute	2,033.51

The attached statements listing the amounts for each employer in detail have been verified by us and show correctly, in our opinion, the amounts due employers as reimbursement under the terms of the agreement. [264]

"We have indicated by a star (*) opposite the amount of reimbursement agreed to where work is still uncompleted. We recommend that a representative of the Union verify the completion of unfinished jobs of all employers so marked before final payment or release of funds is made by the Union.

Respectfully submitted,

H. E. STRONG,

Public Accountant

For: PACIFIC COAST LABOR
BUREAU.' "

Attached to such exhibit are tabulations which were read to the jury by Mr. Faulkner, listing names of some sixty-eight (68) employers, and with columns in each instance showing amount of work on which each employer claimed protection, the amount of reimbursement claimed by employers, based on old work, and the amount of reimburse-

(Testimony of Hawley E. Strong.)

ment agreed to by the Union, following the audit; and at the end the amount of reimbursements claimed by employers in dispute. The employers listed on Exhibit 134 gave me access to their files in the year 1938.

I examined the records with respect to the work they had accrued prior to the date of the contract, and from that examination made the report just read. I did further work in 1938 for the Union. I made an audit for the Conference Committee covering things they had handled in connection with the contract they had. I believe Mr. Kelly, whom I see in the Court room, gave me a copy of this contract.

Thereupon the document was marked 139 for identification and introduced in evidence as "Exhibit 139" over objection as to its materiality, irrelevancy and competency.

This was a supplemental agreement so that the work already done on the first agreement was ineffective. We had to go back and recheck because the amount of the wage had been reduced by the supplemental agreement. [265].

Cross-Examination

By Mr. Faulkner:

I believe it was in the month of September, 1936, that I received directions to make certain calculations under Exhibit No. 135. Those directions came through Mr. Edwards. I read a part of this agree-

(Testimony of Hawley E. Strong.)

ment with care in connection with the audit I subsequently made. It was more a matter of arriving at the correct figure than a dispute. I was directed by someone connected with the Union to make the Audit and given all the information by the Union to make it. Paragraph 25 of the agreement is the paragraph under which I would make the calculations. Under the provisions of the agreement there was a date at which the compensation of employers changed and the change was not to affect existing contracts.

Exhibit 136 should be the list of cabinet shops I called on in 1936, and was a list prepared by me in 1936. It is a list of cabinet shops called on in connection with the calculations made under paragraph 25 of Exhibit 135. There are about fourteen (14) names here. In 1936 I probably called on sixty (60) or seventy (70) employers and a similar number in 1938; I have not the exact numbers in mind.

Mr. Ennes accompanied me only to cabinet shops, not when I called on the men who would come under the head of Millmen. He did not accompany me when I called upon men engaged in the milling business in Oakland. My remembrance is that in 1936 Mr. Ennes went at least once to each of these shops when I first went. To the best of my knowledge he went on the first visit to all of them, on this list heretofore exhibited. That is my impression and best memory. I have a pretty clear recollection he did not call on George Fensky; but to the best of my recollection he called on the others with the possible exception of Erik G. Ernstam. [266]

(Testimony of Hawley E. Strong.)

I knew when I made the audit in 1936 there was a group of employers who came under the head of Lumber Products Association. Mr. Ennes did not accompany me to that group. I do not think I made any calls in Oakland in 1936. I made one on Kulcher and Co. in 1938.

I am of the impression that Exhibit No. 139 was not the first agreement that we worked under. This agreement did not go into effect until October, 1938, and we started work in August, 1938; both of the documents were not handed to me. I believe the second part of Government's Exhibit 139, consisting of some five (5) pages, was the one. These are the two (2) papers, the identical documents, that came out of my possession. These papers came out of my file. Exhibit 134 came into my possession in August, 1938, from Mr. Edwards, I believe. My work in 1938 culminated in a report dated November 3, 1938.

During the period I called on various employers Mr. Ennes did not accompany me to any employer. I don't remember if I had any contact with Mr. Ennes in connection with that audit. In 1938 I called on all the cabinet shops listed on Exhibit 134. I could not tell how many of the sixty-eight (68) employers audited were cabinet shops. I called on sixty-eight (68) employers in 1938 to make a calculation under a formula that flowed from the contract; I used the same contract in each instance. I know that I called on cabinet shops; I also called on mills banded under the name of Lumber Products Association.

(Testimony of Hawley E. Strong.)

Exhibit 137 was a typewritten list handed to me when I first went to work on the job in 1938. It contained sixteen (16) members of the Lumber Products Association. I made the calls with a representative of the Unions, who directed our visits. I got the names of the thirty-eight (38) additional employers in 1938 from the business agent of the Millmen's Union. None of those thirty-eight (38) additional people was in Oakland. I believe [267] it is true that there were at least thirty-eight (38) persons, firms or corporations in San Francisco not listed on either Exhibits 134 or 137. The same basis and the same contract was used to calculate for the employers listed in 134 and 137 and the thirty-eight (38) not listed.

Exhibit 8, for identification, being the minutes of Local 42, were introduced in evidence and marked "U. S. Exhibit No. 8", over the renewed objection of the employer defendants that the minutes of the Unions would be hearsay as to them, and not acts or declarations made pursuant to a conspiracy either charged in the indictment or disclosed from the evidence and no foundation.

By Mr. Clark:

"I am reading from the minutes of Local Union 42 under the date of August 9, 1938:—This excerpt is on the second page of the longhand minutes of that date; this is a report by B. A. Wilcox:

'Going around with the auditor checking over

the books on new and old work. Stated that the shops that belong to the Association are waiting for Mr. Ennes to come back from his vacation.'

Same minutes, August 16, 1938:

'Brother Kelly stated the Mr. Ennes of the Cabinet Association came back from his vacation and were going to have a meeting sometime between now and Friday. The mills formed an association and Harry Gaetjen of the Empire Planing Mill is the new secretary.'

The same minutes, April 23, 1938 (August 23, 1938):

'B. A. Edwards reported that he was going into the shops that belonged to the Association. Visited Braas & Kuhn, Ostlund & Johnson and Mullen Manufacturing Company.' [268]

"The same minutes for September 6, 1938, report by B. A. Wilcox:

'Going around with accountant when necessary and routine business. Conference Committee: Brother Kelly reported that the mills and cabinet shops that belong to the Association are going to start paying in two checks, one with the old scale going to the employee and the 12½ per cent increase on one check which the employee endorses and returns to the employer for which a receipt will be received toward his assessment.'

The minutes of December 13, 1938:

"B. A. Wilcox reported, 'Going around with the auditor.'

Minutes of October 25, 1938, Report of Officers:

"B. A. Wilcox: Going around with the accountant cutting down claims. Material coming from the Tacoma Mill and Supply Company for the Fair. T&G going to Shoals.' "

M. A. PEEL,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am a salesman at present for the Pacific Manufacturing Company and have been for about a year or so. Prior to that I was salesman for Central Door and Plywood Corporation, Portland, Oregon, for about four or five years. I also sold for an affiliated company, Albany Sash and Door Company, Albany, Oregon. I sold sash and doors and inside door jambs, what is commonly called millwork, for those companies in California, including San Francisco Bay area. The employees of Central Company and Albany Sash and Door Company, when I was selling their products, were [269] members of an A. F. of L. Union. I don't know whether they were members of the United Brotherhood of Carpenters and Joiners Union.

(Testimony of M. A. Peel.)

I know James Stewart; he is Manager of Symon Brothers Oakland store. He was a customer; I sold him sash and doors. Mr. Stewart was a customer the last several years. In 1937 and 1938, as long as he was manager there—1936.

I know Walter C. O'Leary. I met him in 1938; I presume about the middle or the last of the year, at the Union quarters on Webster Street in Oakland. Prior to the time I met him I had a telephone conversation with him from Symon Brothers' Store, Oakland. James Stewart was with me; I was in there soliciting business. I didn't get any orders then. Mr. Stewart called Mr. O'Leary; I took the telephone and told Mr. O'Leary who I was, that I wanted to ship some goods in here, doors, and I said that we were an A. F. L. Mill and carried the Union Label; and I was astounded to think we would be restricted in not being able to sell our merchandise in any part of the United States. Mr. O'Leary said what Mr. Stewart told me was true, that I could not ship Mr. Stewart any goods that were forbidden by the Union. I told Mr. O'Leary I would go around and see him; I couldn't understand that. A short time afterward I went around to see Mr. O'Leary at the Union headquarters on Webster Street. I saw him there; nobody else was present. I asked Mr. O'Leary to explain the reason I couldn't ship merchandise in here and he just told me it was forbidden by the Union to bring certain classes of goods in and since there were manufacturers who had the union stamp in this territory

(Testimony of M. A. Peel.)

here—— So I asked him what our workmen up there were going to do to be able to buy merchandise and eat, and he said, "Well, they would have to get along the best they could."

"Q. Did he say the material had to bear the stamp of a mill in this territory?"

"A. That was his——"

"The Court: That was his what?"

"A. That was his answer." [270]

I just talked and I argued for shipping merchandise, and his talk was no. I did ask him over the telephone how the men up there were going to buy California Prunes, and he said, "Well, let them grow their own prunes."

When I met Mr. O'Leary we had a little laugh over that conversation.

At the meeting at the Union Hall Mr. O'Leary gave me a piece of paper and told me what we could do, which is Government's Exhibit 140 for identification. He said those were the rules we were to go by. I said we would obey them if we had to.

Thereupon Government's Exhibit 140 for identification was received in evidence and marked "U. S. Exhibit 140", reading as follows:

"Mr. Burdell: '16. In the interest of standardization of rates of wages and working conditions, it is agreed that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabi-

(Testimony of M. A. Peel.)

net Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase of and the working of the following products is excepted:

Dowels

Panel Stock

Stock Panel

Veneers

Machine Carved, Pressed or

Embossed Mouldings

Pine, Redwood and Philippine

Mahogany Doors

1 panel

10 Light or French

5 Cross Panel

1 Light 1 Panel

1 Light 3 Panel

1 Light 6 Panel

Pine Garage Doors

2-Light Windows

Lumber, rough or surfaced

Sheathing surfaced

Flooring up to 1x6 & 1 $\frac{1}{4}$ x4

Siding and Clapboards

Stepping

T & G up to 1x6" [271]

I do not know who wrote the handwriting after the word "flooring" on the paper. It was on there when it was given to me. My handwriting is on the

(Testimony of M. A. Peel.)

back, "Mr. O'Leary, 21st & Webster". I wrote that the day I got it. I had been selling Mr. Stewart doors and windows and sash. Some of those items appear on this list and some of them do not. Some of them do and some of them do not. Some of the items that do not were banned by the list. I met Mr. O'Leary at the Hall once afterward, to see if any bars had been let down so that I could ship the goods. His answer was no. After those conversations Mr. Stewart quit buying from me.

Cross-Examination

By Mr. Routzoh:

He did not tell me the piece of paper was part of a contract. My memory would not carry that far, I don't remember; he just gave me a piece of paper. I never knew there was any contract with Mr. Stewart's firm. The paper meant to me that things that were not on this list I was not to take orders for and ship into this territory here. I didn't know from the conversation that this was a part of the contract that prevailed in this district with various planing mills, granting certain exemptions as to lumber and millwork; I never saw that contract. I had only heard of a contract between employers and millworkers, as hearsay from customers. I had not heard there were exempted lists of articles in the contract that could be shipped in from any port. I got most of my information from Mr. O'Leary after the customer talked to me. Mr. O'Leary did not tell me there was

(Testimony of M. A. Peel.)

an exempt list in the contract he had with Symon Brothers. That is what he gave me. I put these papers in a file in my drawer because they pertained to business matters. I know that he would not let us do any work up North on any lumber; it had to be done down here. I considered it was possible they would [272] shut us out entirely. Every article that is on the exempt list we could ship out. I have read over the exempt list and notice that as to anything on it there was no objection to it being sold and brought in here. We did not sell dowels, panel stock, stock panel, veneers, machine carved, pressed or embossed mouldings, Pine Redwood and Philippine mahogany doors on the exempt list. We did sell light windows. There was no bar against selling windows then, there was a bar put on later. They stopped those a few months after that list was out and put out another list which I did not get. I did not find out who did that; they just told me to lay-off and not sell any double-hung windows. They were not on the list. Customers told me that; I did not know that was by agreement. I was not interested in that; I wanted to sell merchandise. I sold some finished lumber in here, it was allowed in that list. There were certain things I was selling not marked on the exempt list—sash was one. It did not bear the Union Label. I also was selling front doors not mentioned in the list. Those doors bore the Union Label. I was selling inside door jambs not on the list; they bore the Union Label. That covers most all in that present list. Items came up from time to time, moulding.

(Testimony of M. A. Peel.)

"Q. Did you understand that the reason why the two articles that you have mentioned, front doors and inside door jambs, which bore the Union Label, that the reason they were barred out was because of working conditions in the Northwest were different than the working conditions in the Bay Area, or San Francisco?

"Mr. Burdell: Just a moment. I object to that as asked and answered, and not proper cross-examination, and calls for a conclusion of the witness, and irrelevant and immaterial.

"The Court: Sustained.

"Mr. Routzohn: May I ask one more question along that line, if your Honor please? [273]

"The Court: Yes.

"Mr. Routzohn: Q. Did the people in that plant pay the same wage scale, did they have as large a wage scale as they had in San Francisco?

"Mr. Zirpoli: Just a minute, your Honor. The same objection.

"The Court: What?

"Mr. Burdell: That is not proper cross-examination.

"The Court: Did you say the same objection?

"Mr. Zirpoli: Yes.

"The Court: Sustained.

"Mr. Routzohn: Q. Can you tell this jury in what manner there is any violation of this provision in here in not letting your doors and your jambs come into this District?

(Testimony of M. A. Peel.)

"Mr. Burdell: I object to that as calling for the conclusion of the witness.

"The Court: Sustained.

"Mr. Routhzohn: Of course, we have an exception to all of this.

"The Court: Yes."

Cross-Examination

By Mr. Faulkner:

I don't know whether during the period of my employment by Central Sash and Plywood Corporation, and the Albany Sash and Door Company, they had any agency in San Francisco that sold their products; they sold directly through their own salesmen.

Further Cross-Examination

By Mr. Routhzohn:

The sash that did not bear the Union Label and the front doors and inside jambs which did bear the Union Label, were [274] not made in the same plant. The plant at Albany, Oregon, was an A. F. of L. Plant, but had to ship through the United States, in competition with the Mississippi Mills and other points in the United State where labor conditions were down. We had to have a little lower scale in Albany to compete, and until we could get out labor scale up we could not have the Union Label, although we were working as a Union plant. The living conditions were very favorable to the working men and although rents and living conditions in that area in

(Testimony of M. A. Peel.)

the Willamette Valley were better, with that little lower labor scale, we were unable to ship throughout the United States sash and doors. We could not pay the high scale demanded there, so the Union unionized their people and we worked under union conditions and our Union men paid dues. We were national distributors.

Redirect Examination

By Mr. Burdell:

It was only the sash manufactured at Albany that did not bear the Union Label; the doors and the jams manufactured in Portland did bear the Union Label. We sold molding which we could not bring in; the merchants said they would not buy them from us because they would be blackballed. If the molding were made in the Portland plant they would bear the Union Label; if made in the Albany plant they would not. Central Door and Plywood Association specializes in sash and doors. Our chief business was sashes. The chief business of Central Door and Plywood Association was sashes and doors.

Recross-Examination

By Mr. Routzohn:

"Mr. Routzohn: Q. And your ability to ship these sashes and doors to various places in the United States was due [275] to the fact that you had a lower wage scale, isn't that right?"

"Mr. Burdell: I object to that as calling for a conclusion of the witness.

"The Court: Objection sustained.

(Testimony of M. A. Peel.)

By Mr. Faulkner:

Neither Albany Company nor Central Sash and Door Company manufactured machine carved or pressed or embossed moldings, just run through a planing mill. We did not have a very large mill. The doors and sash referred to were mass production, shipped in carload lots. I never made a check of the conditions in Albany in regard to living conditions and the wages paid in Albany. I didn't ever make a check as to living conditions and wages paid in Portland.

JOHN CARRICK,

called ~~as a~~ witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I am in the building materials business; we handle lumber and millwork; we sell it retail. We have been in that business about 12 years. The name of the firm is El Cerrito Lumber Company, a co-partnership of the wife and myself. In 1936 the millwork came from the Northwest, Washington and Oregon. We purchased from C. D. Johnson, Long-Bell, Weyerhaeuser Company, and Robinson Manufacturing Company, located in Oregon and Washington. During that time we manufactured probably five per cent. of our own millwork. After 1937 we

(Testimony of John Carriek.)

stopped making purchases from the Northwest. In 1937 we purchased a car of finished lumber, 2,000 feet of $5/8 \times 4$ base. Mr. O'Leary had insisted that this item be manufactured in the East Bay Area. [276] Probably five or six months prior I had a conversation with Mr. O'Leary. He said we couldn't bring any patterned or molded lumber or molded front doors. The car that came in 1937, was in the Fall, from Weyerhaeuser Sales Company, State of Washington. The $5/8 \times 4$ base lumber was stored in the bottom of the car, in the center. I asked them to place it there. The car was delivered at Stege, California. After the car arrived I checked the lumber with this invoice, which appears as $5/8 \times 4$ base-board.

Sample of Lumber marked "Exhibit U. S. No. 141", for identification, is a piece of four-side lumber, meaning surfaced on four sides.

Sample of lumber marked "Exhibit U. S. No. 142", for identification, is a $5/8 \times 4$ round-edge base. The base is molded and not permissible to be brought in. It is the same type lumber that came in that carload.

Invoice marked "U. S. Exhibit No. 143", for identification, bears a cross within a circle on the second page, which indicates the base about which I am now speaking.

When the car was almost unloaded Mr. O'Leary came out; he discovered the base in the car. He came over to my place of business, approximately three-

(Testimony of John Carrick.)

quarters of a mile from Stege, and Mr. O'Leary and I had a conversation; no one else was present. This was in the Fall of 1937. He said he had been down to Stege and discovered this car and discovered this base in the bottom of the car; and that we weren't allowed to bring it in; that this item must be manufactured in the East Bay. He insisted that we don't bring any more of that into our yard. He said we would have to take that base out of the county, and insisted on it being done immediately. I sent a truck and driver to haul the base to Vallejo. He said if we wouldn't do that he would put a picket on the car; in fact, he had the picket on the car. He said they were going to continue to [277] picket the car until we got the base out of the car. We unloaded the base and sent it to Vallejo, and Mr. O'Leary sent the picket with the truck to see if we went out of the county. We sold part of it up there, and after it cooled off we brought it back, two or three weeks later. After this experience we didn't attempt to bring any more millwork from the Northwest; we didn't think it would be worth while.

Invoice was introduced as "U. S. Exhibit No. 143."

In the Spring of 1938 there was a pool car came in from Robinson Manufacturing Company, consigned to Lincoln Lumber Company in Berkeley, California. In the car was some lumber for us, purchased from Paramino Lumber Company as jobber or broker, but bought from Robinson Manufacturing Company, Everett, Washington. Mr. O'Leary

(Testimony of John Carriek.)

phoned and said he heard we had a car of jambs coming in; I denied it. We had the car diverted to Walnut Creek and unloaded in the yard of Spencer Lumber Company, and after three or four weeks we went up there and got it and brought it back to our yard. The car was hot, which means not permissible to be brought into the Bay Area. Mr. O'Leary said it was not permissible. After it was brought back Mr. O'Leary came out, but we had it buried with lumber and panels so he couldn't find it. We had to hide it in order to retain it.

Invoice marked "U. S. Exhibit No. 144" was introduced in evidence.

It covers the car of jambs I just referred to.

Mr. O'Leary gave us a list of materials he would let us bring in. I would say I received it about the latter part of 1938.

"U. S. Exhibit No. 145" was introduced in evidence.

* That was the paper he gave me. After the last shipment I spoke about we didn't bring any molded lumber from the Northwest; we had to buy it locally. We did very little manufactur- [278] ing of our own. We had very poor machinery. We had to purchase some machinery later on, in June 1939; consisting of a sticker and four-side planer. A sticker is a machine to manufacture patterned or molded lumber, such as Exhibit 142 for identification.

Samples of wood were marked "U. S. Exhibits Nos. 141 and 142", and were introduced in evidence.

(Testimony of John Carrick.)

We purchased a sticker and planer to manufacture molded or patterned lumber; the type we were previously bringing in from the Northwest. We purchased the machinery because we found it inconvenient; we just couldn't operate by picking this stuff up, it took too long, prices were too high, and delays in getting out orders from local suppliers to our customers. That condition was not existent when we purchased from the Northwest. You could order a car and have it down in two weeks.

Cross Examination

By Mr. Faulkner:

Exhibits 141 and 142 may be classified as soft wood.

No. 142 is a type of molded lumber or base wood; it is something that goes into every house, is an item you have to carry in stock. I didn't say we were requested to buy lumber from mills in the San Francisco Area, we had to do it in order to operate.

We bought from Redwood Manufacturers, Pacific Manufacturing, California Builders, Hogan Lumber, E. K. Wood.

Cross Examination

By Mr. Routzohn:

I wouldn't know whether Johnson Lumber Company, Long-Bell Lumber Company, the Weyerhaeuser Company and Robinson Manufacturing Company were organized mills in 1937, or whether that was non-union lumber we were pur-

(Testimony of John Carriek.)

chasing. I don't know whether [279] the lumber we were purchasing at that time was manufactured under labor conditions lower than the conditions prevailing in San Francisco.

Lumber material appearing on Exhibit No. 143 was purchased by us for our own purposes; it constituted an entire carload, and we received whatever is on the invoice. Cross mark on the second sheet opposite the 5/8 x 4 refers to fir base, that was the only lumber objected to in that car. I suppose they didn't have the facilities to manufacture the remaining part of the carload in this part of the country. The remaining portion of the car was on the exempt list, as indicated by Exhibit 145.

Item of 5/8 x 4 base was the only thing not on the exempt list. That was placed in the bottom of the car, in the center, purposely, so as to hide it, under instruction at the time ordered. We knew we were bringing in lumber contrary to the agreement, of which Exhibit 140 is a portion, but those people don't run my business.

The base consisted of 2,000 feet as compared with 20,000 feet of other lumber that was not objected to. The lumber was made in the Weyerhaeuser Mill, in the Fall of 1937.

We have been instructing the manufacturers to place the "hot lumber" in the cars so that it would be hid from the business agents who came around to see whether we had any hot cargo. We have been doing it occasionally from 1936, on. Some is awfully hard to buy in this territory and we had to get it in

(Testimony of John Carriek.)

to continue our business. I do not know whether Robinson Manufacturing Company of Everett, Washington, was organized by labor in 1938; I could not say whether it was C.I.O. lumber at that time.

I discovered from experience "hot cargo" or "hot lumber" is something I could not buy. It meant something you can't bring in. [280]

"Q. You couldn't bring it in because there was a dispute on, a war on labor between the C.I.O. and the Carpenters' Brotherhood, which was an A. F. of L. organization? Didn't you understand that?"

"Mr. Zirpoli: I object to that as irrelevant, and immaterial. There is no issue involved in such a war."

"The Court: Sustained."

"Mr. Routzohn: That is all."

Redirect Examination

By Mr. Zirpoli:

By saying lumber you couldn't bring in, meant bring from the Northwest, Oregon and Washington.

The purchase price of the base on Exhibit 143 was \$42.50 per 1,000 feet; market price for the purchase of the same size and quality base in the San Francisco Bay area at the time was from \$65.00 to \$75.00 a 1,000.

Inside door jambs on Exhibit 144, from the Northwest, was 78c per set. The market price for the same size and set of inside door jambs purchased locally in 1938, was \$1.10.

(Testimony of John Carriek.)

"Mr. Routzohn: We object on the ground that this is all immaterial, as to what the difference in price was.

"The Court: Overruled."

Lumber 25/32 x 3/8 was 79c per set, delivered from the Northwest. The same purchased locally was \$1.05 at the prevailing market for that particular set. Sets 2 x 8, 6 x 8, 25/32 x 1-3/8 was 74c per set, delivered from the Northwest. The same set of inside door jambs purchased locally was \$1.05, at the prevailing market.

Recross Examination

By Mr. Routzohn:

I couldn't tell you the difference between the wage [281] scale in San Francisco and that firm in Oregon or Washington. I don't know anything about the wage scale in Washington and Oregon. Those are delivered prices.

Recross Examination

By Mr. Faulkner:

The prices I indicated were from an invoice I have in my hand. This is from California Builders, local dealers, and here is a shipment about the same time which came from Robinson Manufacturing Company from the Northwest.

The price of \$1.10 and \$1.05 is the price quoted from a firm engaged in the business of sash, doors, millwork, panels and wallboard. The broker mentioned on purchases from the Northwest was Paramino Lumber Company, a brokerage house in the

(Testimony of John Carrick.)

Bay Area. We used to buy from different brokers. I don't know of anybody in Alameda County. Our business is conducted in Contra-Costa County.

The business conducted entailed the purchase of lumber outside of our own county. We purchased orders through brokers in San Francisco, representing out-of-State firms. We usually bought direct from the mill, Mr. Paramino is about the only one, he is the only one I know of, the only one I can think of at this time.

Further Redirect Examination.

By Mr. Zirpoli:

The prices mentioned for purchase of inside door jambs were the total cost delivered to our place of business. There would be no other cost except unloading. Price on floor base was for merchandise delivered, F.O.B., El Cerrito.

When we purchased locally we had to go down and get it usually. The material shipped from the Northwest is far superior to that bought in San Francisco. They have a regular [282] schedule of prices for material in the local market; they all have about the same price, all mills. We bought from various mills here. There may be a fluctuation of \$2.00 in a 1,000, but no more than that.

CHRIS WININGER,

called as a witness for the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

My business is wholesale lumber and has been for eight (8) years. Just prior to that I was purchasing agent for Red River Lumber Company, for twelve (12) years. The name of my business is Pyramid Lumber Sales Company.

I buy lumber of all kinds from the mills in the North, and manufacturers, and sell to the retail yards and mills for remanufacture. Millwork is any work put on the lumber after it leaves the rough stage in the manufacturing plant. It includes all kinds of lumber, casing, base, molding, T&G, ship-lap, ceiling, flooring, window and door sashes. I purchase from probably fifty, (50) different sawmills in Oregon and Washington, some in California, but mostly in Oregon and Washington. I have visited the mills in the Northwest, very little in the San Francisco Bay Area. I sell to the mills in the Bay Area and have had occasion to visit them in connection with sales.

A piece of Ponderosa pine, surfaced both sides, is millwork. If that same piece is milled it is millwork. I am classified as a wholesale lumber broker. I visited the mills in the Northwest many times. I have made a study of the lumber industry and the operation of mills, and the machinery used in connection with

(Testimony of Chris Winingar.)

the operation of mills. I have studied the speed with which machinery can operate in the mills and the [283] method of running lumber and the cost in manufacture, whether in mass production or small production.

There is no difference in the price paid in buying Ponderosa pine, surfaced four sides, from mills in Washington and Oregon. The mills in those states make no charge whatever for running Ponderosa pine or fir to standard patterns, shown in the standard catalog or standard grade and rule book. The mills in the Northwest make no charge for cutting tongue-and-groove. They make no charge for standard molding. They make a charge, but they make no excess charge, because the difference in freight and difference in weight absorbs the cost of running these special patterns. If you were buying up at the mill there would be a charge but from the difference in freight it would be practically the same. The costs delivered here in San Francisco are the same to the purchaser whether he purchases it surfaced both sides or standard mold or tongue-and-groove.

I had occasion to go outside the San Francisco Bay area in the summer of 1937. I had a shipment of Ponderosa pine coming from the Northwest and directed it should be shipped to the Peerless Building and Fixture Company at Sheehan-Ballards, Berkeley.

I was told by my customer that I had some lumber there on horses, marked "hot cargo", and I had bet-

(Testimony of Chris Wininger.)

ter take care of it. I went to the Sheehan-Ballards place and found that the lumber was on horses and had a sheet of paper, I should judge 3 x 4 feet on both ends, both sides, marked "hot cargo". That was lumber I had ordered from Ewanna Company, Klamath Falls, Oregon.

It was 1 x 10 No. 2 common Ponderosa pine, T&G with a mold on one edge. I called the customer, Klier Bros. in El Cerrito and asked what it was all about. I called up Union Headquarters—it had underneath this "hot cargo". [284] "Carpenters' Union Local No." so and so; Millman's Union, and the Teamsters Union.

I telephoned to the Carpenters' Union and asked them what I could do about it. After the telephone conversation I saw Walter O'Leary, about three days later in July, 1937, at the Union Headquarters, Oakland. I had a conversation with him, for possibly thirty (30) minutes or more. There were others present but I don't know who they were. I talked to the head man in the Carpenters' Union and Millworkers' Union men were present, but what their names were I don't know. I asked Mr. O'Leary what it was all about; what I had to do to get the lumber released. It was something I was not familiar with, never had anything happen like it and had no knowledge as to any restriction to bring in molded lumber in this district. He gave me a piece of paper which showed what was supposed to be permissible and said I would have to dispose of it; get it out of town,

(Testimony of Chris Wininger.)

or something else, that I could not sell it in the Bay Area; it did not have the Union Label on it.

"U. S. Exhibit No. 146" was the paper given to me in connection with that conversation and was introduced in evidence and read to the jury.

"Bay Counties District Council of Carpenters

San Francisco and Vicinity

Office

Building Trades Temple

Fourteenth and Guerrero Sts

Telephone Market 1806

San Francisco, Calif.

D. H. Ryan, Sec'y-Treas.

A. L. McDonald, President

"October 5, 1937

"Bay Counties District Council of Carpenters,

200 Guerrero Street,

San Francisco

Attention: D. H. Ryan, Secretary-Treasurer

"Gentlemen:

"The Employer-Employees B. C. W. P. Labor Conference [285] Committee were asked to define the meaning and intent of the terms 'Flooring', also 'T & G' in Paragraph of the Agreement of September 21, 1936.

"The unanimous decision was that you should advise all parties to the contract that 'Flooring' was defined as 1 x 3; 1 x 4; 1 x 6 and 1-1/4 x 4.

"and that

(Testimony of Chris Wininger.)

"T & G was defined as of the following materials and dimensions:

'Fir, T & G V, also

T & G V and C V

Redwood, T & G V I S also

T & G Bead 1 S

3/8 x 4 & 6

5/8 x 4 & 6

3/4 x 4 & 6

"Yours very truly;

EMPLOYER-EMPLOYEES

**B.C.W.P. LABOR CONFER-
ENCE COMMITTEE**

(Signed) By J. G. ENNES

J. G. ENNES,

Acting Secretary."

The lumber I received was not included in that definition. The T & G I received would not be T & G V as defined by that statement. Mr. O'Leary told me, in connection with that T & G, I would have to get it out of the Bay District, I could not dispose of it in the Bay District. The carpenters and teamsters would not handle it and I could not get it handled because it did not have the Union Label on it.

I again saw Mr. O'Leary a few days later and told him I had made arrangements to have the lumber shipped to McKinley Lumber Company at Stockton. He said that would be all right, but wanted to know if it was going to Stockton, so I wrote a letter to a truck driver at Pittsburg, instructing him to call

(Testimony of Chris Wininger.)

and pick it up and take it to McKinley Company at Stockton, and gave Mr. O'Leary a copy of the letter. [286]

The lumber was not shipped to Stockton. I called the truck driver on the phone and told him the lumber was for Klier Bros. and to stop on his way to Stockton and if they would accept the lumber to give it to them, and if not, to take it on to Stockton. It was delivered to Klier Bros..

I caused a shipment of lumber run to pattern to be made for Paramount Lumber Company, about six or eight weeks later, that came from Ewanna Box Company at Klamath Falls. I received a letter from Union Headquarters asking me to call at a certain time as to why I should be put on the "We do not patronize list."

U. S. Exhibit No. 147 was the letter received, and a carbon copy of my answer is attached.

Thereupon "Exhibit No. 147" was introduced in evidence.

Following receipt of the letter I attended a meeting in the Building Trades Council. My conversation was with Mr. O'Leary and Mr. Patterson. I was called before the Council and asked why I brought the molded lumber into the Bay Area when I knew it was a violation of the rules, and possibly an agreement I had made with Mr. O'Leary not to bring in moldings to the Bay District, to be used in the District.

My explanation was that Paramount Building Fixture Company was remanufacturing this molding

(Testimony of Chris Wininger.)

and nailing the trim on the cabinet and reshipping to customers all over the State and that it not all was being used in the Bay District, and I felt within my rights to bring it in. I was instructed not to bring in ~~any~~ more lumber that had detail millwork on it of any kind. It didn't have the Union Label on it.

Plaintiff's Exhibit No. 147 was thereupon read, as follows:

"First there is a letter on the letterhead of the Building and Construction Trades Council of Alameda County:

"J. C. Reynolds, Business Representative; J. H. Quinn, [287] President; Chas. R. Burney, Secretary and Treasurer.

"Building and Construction Trades Council of Alameda County. Affiliated with the State Building Trades Council of California and the Building and Construction Trades Department, American Federation of Labor. Meets every Tuesday evening at the Labor Temple, 2111 Webster Street, Oakland, California. Phones GLencourt 2474, TWinoaks 3113.

"Feb. 23, 1939

"Mr. Wininger,
Pyramid Sales Co.,
Pacific Bldg.,
Oakland, California.

Dear Sir:

"A request has been made by Millmen's Union, Local No. 550 to place your firm on the

(Testimony of Chris Wininger.)

official "We Don't Patronize" of the Alameda County Building and Construction Trades Council.

"This matter has been referred to the Board of Business Agents for further investigation. The Board will meet on Tuesday, February 28th, 1939, at 9:30 A. M. in the Labor Temple, 2111 Webster Street, Oakland.

"You are respectfully requested to be in attendance for the purpose of bringing about an agreement, if possible, that will be satisfactory to all parties concerned before final action is taken.

"Trusting that we may see you on Tuesday, we remain

Respectfully yours,

BUILDING AND CONSTRUCTION
TRADES COUNCIL
OF ALAMEDA COUNTY

By: Chas. R. Gurney

Secretary-Treasurer.

"owpa-20744

"AFL (20)"

"In response to that is a carbon copy of a letter dated February 25, 1939.

(Testimony of Chris Wininger.)

“February 25, 1939 [288]

“Mr. Chas. R. Gurney, Secretary-Treasurer
Building and Construction Trades Council
of Alameda County
2111 Webster Street
Oakland, California

“Dear Mr. Gurney:

“This will acknowledge receipt of your letter of the 23rd for which I thank you.

“I will gladly attend the meeting on the 28th at 9:30 A. M. to explain my actions, all of which have been in good faith and if not in accordance with the rules as laid down by your Association, I will gladly make any changes or revisions necessary.

“It is my intention at all times to cooperate with your organization in every way.

Very truly yours,

CHRIS M. WININGER, Manager
PYRAMID LUMBER SALES
CO.

MCW :mes

At the conversation I had with Mr. O'Leary with relation to the shipment of lumber marked “hot cargo”, I showed lumber to Mr. O'Leary at the time.

Sample of lumber marked “U. S. Exhibit No. 148” is a piece of lumber showed to him.

Mr. Walter O'Leary placed the penciled letters “O.K.” on the planed surface thereof. He told me

(Testimony of Chris Wininger.)

that particular item was o. k. for me to bring in without the Union Label. Name and description on back was put there by Ewanna Box Company.

Thereupon plaintiff's "Exhibit No. 148" was introduced in evidence.

Mr. O'Leary placed the penciled notation "Out" on the surface of Exhibit No. 149. At that time he said it was not permissible, I couldn't bring it in, it wouldn't be run locally and bear the stamp of the local union. He made one or two [289] suggestions how I might be able to get it run. He mentioned Lamman Brothers and I took it there, but they said they could not and would not run it, they couldn't run anything as thin as 3/8s of an inch. Mr. O'Leary said it would have to be run locally and bear the stamp of the Union Label, local union. It was to keep the local men working, give work to the local millmen. If it was run in some San Francisco mill and bore the Union Label of a San Francisco mill it would be up to me to prove that the wages paid to the San Francisco mill were in comparison with the wages paid in the Bay Area. Mr. O'Leary told me that more than once.

Thereupon "U. S. Exhibit No. 149" was introduced in evidence.

I made a sale of lumber to the Blackman-Anderson people in 1940, of Ponderosa pine from Ewanna Box Company at Klamath Falls. Part of it that was molded was with ship-lap with a V joint and one shipment came in by mistake, that was T & G

(Testimony of Chris Wininger.)

instead of V joint, and Mr. O'Leary was there when we unloaded it and he refused to let them unload it, but eventually did let them unload it and they called me up and told me I had to get the lumber out of the Bay District, that they would not allow me to sell it in the Bay Area. I took it back and my truck man went and got it to take it out of Nuner Brothers, El Cerrito. That same day Mr. O'Leary called me up and asked me what I was going to do with it. I told him I had sold the lumber to San Francisco Wrecking Company at Seabright, California, just out of Monterey.

While it was on the horses waiting for the San Francisco Wrecking Company to come and get it, one of the local yards wanted to buy it and I sold it to him and notified my customer at Seabright that I had sold the lumber and would give him another shipment, which I did. [290]

In an effort to make sales, if the customer told me he had a sale at Stockton or Salinas, etc., I would bring the shipment in of the molded lumber marked for that particular city. The truck driver would pick them up marked for out-of-town delivery and deliver to the customer with the markings on the lumber. What the customer did with it I didn't know; it was none of my business. I never saw the lumber, anyway.

I sold possibly fifty cars on that basis, by placing a destination other than San Francisco. The lumber was intended for a destination outside of the

(Testimony of Chris Wininger.)

Bay Area, so far as I know. I don't know if any was used in the Bay Area; not to my knowledge.

I made arrangements with the customers to have lumber shipped and marked for destination in the manner described. I told them they had to take it that way or I couldn't bring it in. That was the plan arranged for the bringing of the lumber in for the customer.

Sample of lumber marked "U. S. Exhibit No. 150" is part of the lumber marked "hot cargo".

It was thereupon introduced in evidence as "Exhibit No. 150".

It is Ponderosa pine, T & G, bead, cone, bead. This lumber is prohibited from coming into this area.

Cross Examination

By Mr. Faulkner:

I have been engaged in business as Pyramid Sales Company for eight (8) years, and also so engaged in 1936, and continuously since that time. I was bringing in Ponderosa pine that came from Ewanna Box Company at Klamath Falls. I brought in various kinds of lumber, fir, spruce and hemlock, from sources other than Ewanna. I was engaged in the same general business in 1936, 1937 and 1938. [291]

I sold Mullen Manufacturing Company several cars of merchandise. Most of the lumber I sold to Mullen was for refinishing, job lumber for refinishing into cabinets. From time to time I solicited the trade of the Mullen Manufacturing Company and

(Testimony of Chris Wininger.)

got some of Mullen's business. Not to my memory did I have any difficulty in bringing in a single stick of lumber for Mullen Manufacturing Company.

Cross Examination

By Mr. Todd:

Following the conversation in February, 1938, with Mr. O'Leary and Mr. Patterson, I was not placed on the "We Do Not Patronize list" of the Alameda Building Trades Council, to my knowledge.

When I went to that meeting I was placed on the witness stand, as I am now, by the Chairman of the meeting, and he wanted to know if I bought this molded lumber off of the Paramount Fixture Company. It was similar to a Court. The Chairman was seated to my right, possibly three feet away. He asked me if I had brought in certain lumber contrary to agreement. I told him I did because I knew Paramount was manufacturing fixtures and shipping them all over the State, because I had sold their fixtures myself in Stockton and other places. I said it was not violating my agreement or any rule when the lumber was being manufactured and shipped out of the Bay Area.

That was all the questions asked me and they sent me into the hall where Mr. Patterson and Mr. O'Leary followed me. They were going to have a conversation, by the jury or whoever was there, I don't know, and they said they would let me know. I call it a jury, I don't know, there were fifteen or

(Testimony of Chris Wininger.)

twenty men there. There was a bunch of men sitting in the room and they were discussing it between them and were going to let me know, [292] so I went out in the Hall and we engaged in friendly conversation for ten or fifteen minutes, and Mr. O'Leary said: "Chris, you had better quit bringing in anything for the time being, until all this blows away; we don't know whether it is going to be used locally, and the best thing to do is not to bring anything in except what is going to be used locally."

In the first room Mr. O'Leary just told the court that I was bringing in lumber. I am not referring to the meeting as a court to prejudice the jury. He said to the Chairman of the meeting I was bringing in molded lumber in violation of the rules, in violation of the agreement. The Chairman asked me if it was true and I told him it was. I was not asked if I intended to comply with the agreement; Mr. O'Leary instructed me not to bring in any more. He said the best thing for you to do is not to bring in anything, any molded lumber for shipment within the State.

I met Mr. O'Leary in my territory every week or so. I had not had a number of disputes with different Labor Unions prior to that time. I had one subsequent dispute with the same Union. About two or three months ago I was called down to the Union headquarters because I was taking some lumber out of a car and I had a teamster taking it out of the car instead of a lumber handler. Mr. Pat-

(Testimony of Chris Wininger.)

person, who was at Kliers Brothers' yard, asked me if I could not use some pressure to get Beckman to put a lumber handler in the car instead of a teamster, and I said I would see what I could do, and went up to where they were loading my carload at that time, and the teamster said, "If you put a lumber handler on the car I will walk off the truck", and I said, "That is not my job, that lumber is all sold before it gets into town here; if there is anything I can do to help I will do it."

That is not a dispute, I had nothing to do with it. That is the only trouble I had. [293]

I answered the letter asking me to attend the meeting; carbon copy of the letter is my answer. I recall stating if my actions had not been in accordance with the rules as laid down by your Association I will gladly make any changes or revisions necessary and said it is my intention at all times to cooperate with your organization in every way, which I meant.

I remember Mr. O'Leary telling me something to the effect that I could bring in all the lumber I wanted, but we will not work on it if it is non-union lumber. He said he would put on that "We do not patronize", if I did bring in lumber; that I could not bring it in, that I would be put on the unfair list and no one would buy from me, the mills would not be allowed to buy from me. He did not say that I could bring in all the lumber I pleased and that union workmen would not work on it. Mr.

(Testimony of Chris Wininger.)

O'Leary did not ask me if I intended to comply with my agreement, but he requested me to comply with it.

The letter indicated what organization it was at the meeting. Millworkers' Union Local Number so-and-so, it is in the letter. I guess it is Local 550.

I know Mr. O'Leary represents the millworkers' union and Mr. Patterson the lumber handlers' union. They said they wanted to keep the local men busy.

We discussed "patronize home industry", and I said all things being equal, I preferred to patronize home industry myself, if we could get it done locally.

As far as I recall just Mr. O'Leary and Mr. Patterson and myself were present at the second conversation in the hall. We waited there half an hour waiting for the verdict to come out of the room. I call it a verdict because they were going to let me know whether I was going to be put on the "We do not patronize list". Finally someone came to the door and called Mr. O'Leary back in the room, he came back and said, "We will drop [294] you a letter and let you know what about it", and I never heard from them afterward. Nobody used the word "verdict", but I have to have some name for it. Nobody used the word "court".

Recross-Examination

By Mr. Faulkner:

The cabinets mentioned were kitchen cabinets.

(Testimony of Chris Wininger.)

Redirect Examination

By Mr. Zirpoli:

As far as I remember lumber sold to Mullen Manufacturing Company was all shipped in lumber, surfaced two sides. It was permissible to bring that lumber into this area. The agreement and union rules referred to at the meeting were the rules that we could not bring in anything in the Bay Area that contained millwork or molded lumber or moldings, etc., surfaced four sides or surfaced two sides.

The word "court" was not used at the meeting nor was it used elsewhere by Union men.

There was a verbal agreement with Mr. O'Leary that I would not bring in any molding or molded lumber from the North into the Bay Area unless it had the Union Label and the wages paid at that particular point were in comparison with the wages paid in the Bay Area, but I could not get it from the North with the Union Label on it.

Recross Examination

By Mr. Faulkner:

According to my memory all I sold to Mr. Mullen was shop lumber to remanufacture. It is only surfaced two sides. The question of permissibility in my sales to Mr. Mullen did not arise to my knowledge. As far as I can remember I sold lumber from the State of [295] Washington to Mr. Mullen, and I sold what he ordered.

(Testimony of Chris Wininger.)

Recross Examination

By Mr. Zirpoli:

As far as I can remember the things he ordered were things which were permissible pursuant to my agreement. The question of permissibility, when dealing with Mr. Mullen, never arose.

HARVEY BROWN,

called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I was a dealer for Aladdin Lumber Company of North Portland, Oregon, in 1940. I represented them as salesman. They sold ready-cut homes. It was a frame house that had all its studding cut, and all the lumber cut and fitted, ready to nail together. It was cut and made ready to fit at the plant, in North Portland, Oregon. It was shipped down here in sealed freight cars, finished and cut.

They would sell all of the wooden part of a house, above the mud sills, and the roof, nails, tanks, building paper, doors and windows; everything but the electrical and plumbing equipment, foundation, plaster and heating. The price ranged from a few hundred dollars up to many thousands, depending upon the size and quality of the house selected.

(Testimony of Harvey Brown.)

My business consisted of soliciting business, following up inquiries and attending to F. H. A. details, tending to arrangements with contractors. The Company had a form order blank and I signed that as authorized dealer.

I met Mr. Charles Rowe one time, about March 1, 1940. [296] He called my office by telephone and stated he would like to see me and see if we could not get together. I told him I would be glad to talk to him at any time and subsequently met Mr. Rowe at my office, where he came with a gentleman introduced as McGinnis, who he said was a representative or secretary of one of the carpenters' unions. I think Mr. Rowe said he was representing one of the unions.

Mr. Rowe, Mr. McGinnis and I had a conversation with my wife present.

"Q. Will you tell us in your own words to the best of your recollection the substance of the conversation that you had with Mr. Charles Rowe at that time?

"Mr. Faulkner: We object to that as immaterial, irrelevant and incompetent, hearsay as to the employer defendants, and not within the issues of this case, no foundation laid in this, that there is no evidence in this case that a single employer here on trial is engaged in the business or enterprise or undertaking similar to that engaged in by the witness, nor is there any showing in this record that any defendant employer in this case is engaged in mill-

(Testimony of Harvey Brown.)

work business as described by any witness in this case.

"Mr. Routzohn: We also wish to add to that objection that it appears that it is non-union material that is being shipped in here and therefore does not apply to our union.

"The Court: Overruled.

"Mr. Faulkner: May that objection go to any conversation between this witness and Mr. Rowe?

"The Court: Yes."

Mr. Rowe asked me if we could get together on this building program and I told him that was taken care of in Portland, Oregon, I had nothing to do with policies of the company. He asked me what the saving was by the ready-cut [297] system and I told him approximately twenty per cent. He then said, "You can readily see how that would affect our arrangements by reducing the amount of labor." By arrangement he meant our labor setup. He said something to that effect.

He said they had stopped the Montgomery Ward and the Pacific System Company from building ready-cut houses locally, and I asked Mr. Rowe if he was implying that I could not bring in ready-cut houses, and Mr. Rowe said, "That may hit you right between the eyes, but that is virtually what I am telling you." That was along in the conversation.

He made inquiry as to the manner of doing business with Aladdin Company in a general way. He said if he brought these houses in that Union labor

(Testimony of Harvey Brown.)

would not put them up. He asked me if this lumber had a Union Label on it. I told him it did. He said they stopped Montgomery Ward and Pacific System Company. I understand Pacific System Company conducts practically the same line of business from Los Angeles that the Aladdin Company did, about March 1, 1940.

After this meeting, about the first of March, I did not see Mr. Rowe again. Shortly after that I received a summons to come down to the Building Trades Council for a meeting, I believe, March 12, 1940. I believe it was Alameda Building and Construction Trades Council in Oakland. I went at the appointed hour. I believe it was at A. F. of L. or Labor Temple. I only saw one man whom I had seen before, Mr. McGinnis. There were about twenty or twenty-five other men there. I understood they were business agents of various union organizations.

They asked me what my business was in connection with the Aladdin Company and the Union Label and some questions about the union of the mill in Portland, of which I didn't know anything, and asked them to get that information from the Portland office. I tried to answer their questions. [298]

The purpose was whether the Aladdin Company should be placed on the blacklist in Oakland or the "We Do Not Patronize" list. The reasons stated at the meeting why Aladdin Company should be put upon such a list was because they were non-

(Testimony of Harvey Brown.)

union in the mill and we did not pay the same wage scale that they did in Oakland, and it would make a labor difference in the construction of a house.

They said they would let me know the decision. I received no communication or word from the persons present at the meeting. I had no further contact with Mr. Rowe or the other persons.

E. W. YATES,

called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I am manager of F. S. Buckley Door Company, and have been for about three and one-half years. I am one of the copartners. Before I became manager I was a right-hand man of Mr. Buckley. I acquired an interest in the business after his death. Before that I was employed by him from May, 1924.

The business of Buckley Door Company is general millwork. We specialize more, though, on sash and doors.

In April, 1937, we entered into an agreement with the Union. I was unable to locate the contract. I have a 1938 contract. That is the last one we entered into. There is a memorandum that goes with that, I think covers an arbitrary wage set at that

(Testimony of E. W. Yates.)

time, a retroactive wage scale, pertinent to the same contract.

Card is that of Al Edwards, business agent at the time, which was received from him in the regular course of business. [299]

Thereupon card of Al Edwards was marked
"U. S. Exhibit No. 151".

"U. S. Exhibit No. 152", for identification, is the last agreement that we had with them. Prior to that agreement we had a conference with Mr. Ricketts, a member of the Union. He called up and said we had a job out on Carl and Stanyan Streets, from contractors known as Steen & Kreig. He said we were going to supply the millwork for that job and we were not on the fair list, we didn't have stamped goods with the Union stamp. He said if we went ahead with the job under those conditions we were going to have trouble.

Later we entered into this contractual arrangement with the Union. Before we consummated the agreement we had a number of conversations with Al Edwards and Dave Ryan, in the early part of 1937, probably the first of March. As a result of these conversations we entered into the agreement.

We had lumber coming from the North at the time. Principally interior trim, doors, jambs, material like that. We had been bringing that material in ever since the first part of 1936. We had this material in our place; in the neighborhood of four or five carloads.

(Testimony of E. W. Yates.)

I had a conversation with Mr. Edwards about this stock, Mr. Ryan was present. They demanded we have stamped goods, and if we were going to sign up with them, enter into an agreement to operate a closed shop and stamp the goods we sent out of our place. We wanted to know where we were going to come off on the present stock that didn't have the stamp on it. That was quite a vital point, so we agreed to sign up with them, provided they would give us the right to dispose of the goods we had on hand. Also in that same agreement that they would exempt the three cars we had bought in the North at that time. They agreed to stamp the goods we had in the [300] house so we could dispose of it on union jobs and also agreed to let the other three cars come in that we had bought.

The Union sent a man to stamp the goods in the shop, and we hired the man that was sent, and they sent another man out to complete the work.

"U. S. Exhibit No. 153" is pieces of lumber that was stamped.

We brought in all the items that were complained about, such as interior trim, surfaced-four-sides material, that was not what they were complaining about. The items they were complaining about were molded items. We had molded items in our shop purchased in the Northwest. We were getting most of our stuff from Olympia, Washington, at that time.

Thereupon "U. S. Exhibit No. 153" was introduced in evidence.

(Testimony of E. W. Yates.)

One of the three cars arrived. I called up Al Edwards at the Hall. I said, "Al, we have got that car of trim here, we want you to stamp it." I don't recall his exact words, but he left the thought with me that he did not know anything about such an agreement. We had not had the car unloaded. We wouldn't touch it until we had them stamped, that was our agreement. We made it in good faith with them and supposed they would carry it out with us. We were somewhat exercised over the fact that he would not stamp it for us, so we went down to the Hall at 14th and Guerrero Streets, Mr. Buckley and I.

We talked to Dave Ryan and Al Edwards. We asked them why they would not do it. They said they didn't have any such agreement with us, that they were going to stamp the three cars that we had ordered. We had quite a long discussion, probably about thirty, forty-five minutes, and finally we made a deal that if they would stamp that one car we would cancel the other [301] two cars, and they finally agreed to do that.

The lumber in the car was what you might call "hot items", items they didn't want in here.

"U. S. Exhibit No. 154" is a manifest, also a remittance blank listing lumber that came in that car. We were finally permitted to unload.

Thereupon "U. S. Exhibit No. 154" was introduced in evidence.

(Testimony of E. W. Yates.)

Cross Examination

By Mr. Faulkner:

My firm is Buckley Door Company; our business is general millwork, which I describe as doors, frames, interior trimming; for sale to contractors and home builders.

We first started in business here in 1924. We were operating out of Portland during 1935, when things got tough here, in early '30s, '33 and '34, and at the end of 1934 we went to Portland and operated out of Portland during 1935. We came back here the first part of 1936, and my firm is here now. When we came back here our materials were coming from Washington and Oregon, and we were engaged in the sale of those materials to whatever customers we could get in this district.

At that time we did not have a Union Label. The Union Label on our goods came alone later, after an agreement. April, 1937, was when we signed the agreement with the Union. There is a paper that isn't here that we signed in 1937.

We might have sold plywood to Mullen Manufacturing Company prior to 1937. We never had any discussion with anybody prior to that about the Union Label. We were not interested in the Union Label and would not have any reason for discussing it. I could not say definitely whether we sold our product to Mullen Manufacturing Com-

(Testimony of E. W. Yates.)

pany during 1936 or the [302] early part of 1937. We might have records which would disclose it. I will examine the records to see if we made a sale, and if we did, will bring the record of it.

Cross Examination

By Mr. Rontzohn:

After our first contract with the Carpenters' Union we received the Union Label which we have continued to use up to the present moment. Based on the contracts with the Union we used a Union Label on material that we should use it on. The management of the business has no access to the stamps. The men in the shops have control of the stamps. The Union Label is used in our shop on the work we turn out.

Exhibits 153-A and -B were taken from the wood that was in our yard at the time we first signed the agreement. That was non-union material. The carload we had the rumpus about was non-union material also. That was one of the cars they had agreed to let us bring in. They stamped the car after we had entered into our agreement with them. They also stamped all lumber on hand at the time of our agreement.

The card reads: "District Council of Carpenters", "Exempt Material, by the Bay Counties District Council of Carpenters". That isn't the Union Label. I think that is a special stamp, probably made for cases just like ours. It was stamped on

(Testimony of E. W. Yates.)

our goods to be disposed in this locality. That covered that special arrangement.

Cross Examination

By Mr. Tobriner:

The only agreement we ever signed was with the Union that you see the agreement with on the table. That did not include the Building Trades Council. I think someone told me [303] he represented the Building Trades Council. I think Mr. Ricketts is the man who told me. It is a little hazy, but that is what I think.

Recross-Examination

By Mr. Routzohn:

Contract, Exhibit 152, shows it was made, so far as the Unions are concerned, with W. P. Kelly, W. L. Wilcox and A. L. Edwards, representing Local Millmen's Union 550 and Bay Counties District Council, by Mr. Ricketts. I don't know if the prior one was by the same individuals. It was the same organization.

The Court: Did Mr. Ricketts sign this?

Mr. Routzohn: No, Mr. Ricketts' name is not on there.

Redirect Examination

By Mr. Zirpoli:

In the consultations had with Mr. Edwards at the time we entered into the contract, Mr. Spencer participated in one. He is the manager of the Eureka Sash and Door. He is connected with the Lumber

(Testimony of E. W. Yates.)

Products Association, as far as I know. The conversation was held in his office in April, 1937, just prior to the signing of the contract. There was present Mr. Spencer, Mr. Buckley, Mr. Ryan, Mr. Edwards and myself. One of the matters discussed was the releasing of the stock we had in the warehouse. Mr. Spencer participated in it.

Thereupon Minutes of Millmen's Union No. 42, Exhibit No. 7, for identification, was introduced in evidence as "U. S. Exhibit No. 7", with the understanding that the minute books should be offered in evidence with the privilege of anybody connected with the case reading from the minutes.

"The minutes are dated San Francisco, California, [304] April 27, 1937.

"'B. A. Edwards in his regular weekly report stated that he had placed a man in Buckley's Mill to affix an 'Exempt Stamp' to all of their materials now on hand and that no more materials would be brought in under unfair conditions by Buckley.'

"That is the end of the sentence, if your Honor please, that I read."

CLARENCE BLACKMAN,

called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

My business is lumber. I have been in that business about twenty-five years. I am a partner in the business of Blackman-Anderson Lumber Company. We buy and sell stock goods. We bought white-pine lumber during the year 1938, from Klamath Falls. I made a purchase of that kind of lumber in May, 1938, and recall the arrival of a shipment in May of 1938, at our yard.

I had a conversation with Mr. O'Leary about the shipment. It was white-pine lumber from Klamath Falls. It arrived at our spur track in front of the mill. I was there at the time of the unloading. That particular car was a pool car and we were stopped by Mr. O'Leary from unloading it. He had his man with him and the Lumber Handlers' Union agent was called to take our men off the unloading at the time. We were unloading the car and the men were stopped by Mr. O'Leary and by Mr. Patterson, of the Lumber Handlers Union, and we were told we could not unload the car, and that which we had unloaded was marked "hot" and the car was marked "hot". I finally got Mr. O'Leary to get Mr. Patterson to release the car so we could get the lumber out to stop demurrage. We [305] were permitted to take the lumber off and the men were told not to

(Testimony of Clarence Blackman.)

handle it after it was unloaded. After it was unloaded it was marked "hot", in chalk. We were told we had to stop bringing in that type of material, that we would not be permitted to bring it in from Klamath Falls, Oregon. He told me we could bring it in in blank and have it run locally. He stated that the material that was brought in could not be sold in a certain number of counties around or adjacent to our territory; if it was going out of the district we could bring it in.

We had to stop purchases from the northern mills after that incident. We were not able to bring any more in. We brought some material in blank and had it run, then it would be stamped by the mill that we had run it and we were permitted to sell it. This increased our cost of that lumber. It increased the price of the material, it also made an inferior article out of it because the additional run degraded the material.

"Mr. Routzohn: I would like to ask that that all be stricken out for the reason that it is immaterial, irrelevant, and incompetent.

"The Court: Denied."

We received lumber, it was part of three cars, in the latter part of 1939. After it was all piled in we were told that we would have to move it out. That was after Mr. Anderson and I started business, before it was my Dad's. This happened in the Fall of 1939, November or December.

I had a conversation with Mr. O'Leary about this

(Testimony of Clarence Blackman.)

lumber. We put that in without taking it up with him, feeling we had a right to put in the stock we wanted, and after we had piled this material he came in and examined it and told us we would have to take it out of there or have it rerun, get a union stamp, and we would be permitted to move it back. We [306] loaded up one large load and sent it to a union mill to have it rerun. We were going to have it sanded, and they turned it down and our driver returned it. So as not to involve the driver I drove it over to a shed some blocks away and stored the material there, which we also did with the rest of the material we had piled in the yard. We had to haul that lumber early in the morning or late at night, whenever we felt we were not under watch and could get it to the job so as to dispose of it. After we disposed of that material we discontinued it and worked along their lines.

While we were making purchases from the Northwest, the price for the two-surfaced lumber and for the same lumber, run to standard mold or pattern, was the same. If we brought the lumber down surfaced four-sides we would have to have it milled here if they wanted to have it patterned. The cost of patterning it was anywhere from \$6.00 to \$10.00 additional a thousand.

We purchased lumber through the broker, Mr. Wininger, in the early part of 1940; a stock of material that conformed to Union rules which we were permitted to bring in. The mill made a mistake and

(Testimony of Clarence Blackman.)

sent our old pattern, and that material was spotted by Mr. O'Leary. He was there when it was unloaded and I immediately called Mr. Wininger and told him that the material was wrong, that he would have to dispose of it. Had it not been for Mr. O'Leary's conversation we would have kept it because it was shipped in material that we wanted to carry.

By lumber I mean millwork. Mr. Wininger took that lumber back, he had it hauled away by his trucks. [307]

Cross-Examination

By Mr. Routzohn:

I stated three different incidents of lumber objected to by the unions that I had purchased from the Northwest. By a "pooled" car is meant several other lumbermen had lumber in the car. That car was gotten together by Mr. Wininger, and in it were several orders. Each would take his portion of the car.

"Q. You used the words "Hot Lumber" or "Hot Cargo". What was meant by that?

"A. That means lumber that the unions objected to us bringing in.

"Q. Was that because it was unstamped or non-union lumber?

"A. It was union lumber. It was because it was not stamped.

"Q. Because it was not stamped?

"A. It was not run in the Bay District.

(Testimony of Clarence Blackman.)

"Q. Is that what your understanding is of it, or was it because it did not bear the union label?

"A. That material has to be run in the Bay District.

"Q. Did it bear the union label?

"A. It had no union label.

"Q. Wasn't that the objection, that it didn't have the union label?

"A. It would have been objected to because they wouldn't have recognized the union that it was run by because it probably would have been a CIO union or a company union." I don't know if that was C.I.O. lumber that came in at that time. I believe it is a company union, the Ewanna Lumber and Box Company located at Klamath Falls, Oregon. I wouldn't want to be quoted on whether it was a company union—if may have been A. F. of L., I don't know. It didn't have an A. F. of L. stamp on it. The shipment in 1939 came from Ewanna Lumber and Box. It didn't bear the union label. The mistake made by Mr. Wininger in fulfilling our orders in 1940, was that we had asked him to purchase lumber acceptable to the local union, and he didn't; that lumber was purchased from Ewanna Lumber and Box Company and didn't bear the union label. [308]

Redirect Examination

By Mr. Zirpoli:

I don't know whether this lumber is manufactured by a particular union. I understood in my

(Testimony of Clarence Blackman.)

conversation with Mr. O'Leary by "hot" millwork items that were discriminated against by the union, for the reason it was work that should be done here. It was taking work away from the men who were here.

Recross Examination

By Mr. Routzohn: [309]

All of this lumber that was objected to did not have the stamp of the carpenters' brotherhood.

E. W. YATES

recalled by the United States.

Cross-Examination

By Mr. Faulkner:

During 1936 to 1940 we sold material to Mullen Manufacturing Company. We had no trouble on any union question, in making deliveries to Mr. Mullen. Defendants' Exhibit B for identification, is a ledger sheet from our ledger. The type of merchandise covered by this ledger sheet is doors in 1937 and, I think, doors in 1938 and 1939. In 1937, they were slab doors and five cross-panel doors. I think there was some hardwood. I am positive they were all doors in 1937, because I checked my records. I didn't check the records for 1938 or 1939.

(Testimony of E. W. Yates.)

Redirect Examination

By Mr. Zirpoli:

In my conversation with Messrs. Spencer, Buckley, Edwards and Ryan, the releasing of merchandise from the warehouse at that time was a general topic of discussion. Mr. Spencer said the mills had finally agreed to permit the union to stamp the stock of goods we had in the warehouse.

Recross Examination

By Mr. Faulkner:

The contract identified in my direct examination was given to me by some member of the union, I assume around September 30, 1938. I think I signed a counterpart. We had another written agreement with the union in 1937, at the time we first signed up with them.

Thereupon, the contract was introduced in evidence as defendants' Exhibit C, which is a mimeographed document, beginning: [310]

"For the purpose of promoting the mutual interests of the parties signatory hereto, it is agreed between F. S. Buckley Door Co. and the Bay Counties District Council of Carpenters, as follows:

"The wages, hours and working conditions of the cabinet makers, carpenters and millmen employed by the F. S. Buckley Door Co. will be as stipulated in the agreement between the District Council of Carpenters, Millmen's Unions Nos. 42 and 550, and the Lumber Products Association, Inc., and the Cab-

(Testimony of E. W. Yates.)

inet Manufacturers Institute, Inc., Northern Division, which is as follows:

"Then presumably it is a mimeographed copy of that agreement and there is a paragraph that it might be well to read, paragraph 2 of this agreement, which I think has been read once before to the jury. It says:

"It is fitting that the wording of the Arbitration Board be here quoted and its purpose and intent be and is made a part of this Agreement: 'Maintenance of Fair Labor Conditions: It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interest of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement'."

There followed the provisions of the agreement of 1938, and the following provisions not previously read to the jury:

"Memorandum as to payment of wages established by arbitration effective next pay day.

"The rate of wages established by Employer-Employee Agreement effective June 15, 1938, shall be paid in the follow- [311] ing manner:

"1. All employees subject to the Agreement shall be paid the new rate of wage retroactive to July 10, 1938.

(Testimony of E. W. Yates.)

"2. The payroll shall be made up so that the difference between the old rate and the new rate is on a separate check. The check covering the difference shall be endorsed at the time of payment by the Employee to the Employer and a receipt issued covering such check or checks showing name of employee and amount in detail, said receipt to be delivered to a representative of the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. A Memorandum receipt will be given to the employee if demanded. The check shall be applied to offsets arising from work subject to the old rate of wage as set forth in Paragraph 32 of the Agreement. The total amount so applied shall not exceed such offsets as agreed to by the Employer and the Conference Committee Local Unions No. 42 and [312] No. 550 Bay Counties District Council of Carpenters. The amounts of the offsets agreed to shall be in writing and signed by the Employer affected and the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. The endorsed checks shall be held intact for the Union's accounting.

"3. In the case of offsets not existing or having been paid off, then the checks shall be endorsed to the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters in such manner as they shall designate. The Employer shall deliver said checks to a Representa-

(Testimony of E. W. Yates.)

tive of the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters upon demand and receipt for same.

“4. All funds withheld by the Employer as offsets against agreed to jobs subject to old rate, unless completed by March 1, 1939, shall be released to the Union. Upon the completion of said jobs the Employer shall be refunded by the Union in the amount agreed to.

“5. Unadjusted matters shall be referred to the Joint Committee referred to in Paragraph 27 of the Agreement.

“6. In the event there exists work on which a refund is claimed and not agreed to by the Union, same shall be noted on the list agreed to as ‘The following jobs are subject to review as per paragraph 27 of the Employer-Employee Agreement.’”

Recross Examination

By Mr. Routzoff:

The mills that manufactured the material that was objected to by the unions were Washington Veneer, at Olympia, Washington, and Long-Bell Lumber Company, Longview, Washington. That is the material that the union stamped for us—the stock that they exempted. We had other stock in the house at Portland, that we had moved from Portland the early part of 1936. That material we bought from mills at Portland, the Jones Lumber [313] Company, and a little Company at The Dalles, Oregon.

(Testimony of E. W. Yates.)

"Q. Did you know at that time and do you know now whether or not some of those companies were organized under the CIO?

"Mr. Zirpoli: I object. I have not interposed this objection, but it seems to me it is irrelevant and immaterial.

"The Court: I do not think it makes any difference whether it was the CIO or AFL. Sustained.

"Mr. Rontzohn: Our point is, of course, if it did not bear the union stamp of the Carpenter Brotherhood of the AFL that we had a perfect right to keep it out.

"The Court: Objection sustained."

I never saw before Government's Exhibit 11-42 for identification, purporting to show list of mills in the Northwest that were CIO and those that were AFL.

Recross Examination

By Mr. Faulkner:

Doors sold to the Mullen Manufacturing Company were manufactured outside of the State of California. Slab doors were manufactured at Portland, Oregon. I don't recall where the other type came from. The doors didn't have the union label they came from out of the State.

"Mr. Tuttle: I just wanted to be sure that as to the rulings made, we have under the stipulation an exception.

"The Court: Yes, certainly. I repeat again,

Testimony of E. W. Yates.)

every ruling I make, every defendant has an exception to."

Mr. Zirpoli read from minute book of Local 42, Exhibit No. 7, Minutes of March 2, 1937, as follows:

"Brother Kelly reported on the last meeting of the conference committee stating that the mill owners had agreed to cease manufacture of materials for Buckley Door Company. B. A. Edwards also reported that he had contacted several contractors who had promised that they would not buy any of Buckley's products.' " [314]

WILLARD B. JEFFERSON

being called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

"My business is retail lumber in San Francisco, and have been in business here about 35 years. I handle lumber, millwork, paints, roofing, hardware. I handled lumber, millwork, patterned lumber in 1939, under trade name, Greater City Lumber Company. I was buying outside of the State in 1939. I think I bought door jambs from mills outside the State, late in 1938. I do not think I did in 1939. A door jamb is the piece the door hangs on—the side of the door

(Testimony of Willard B. Jefferson.)

opening that you hang the door on. Exhibit No. 155 for identification, is an invoice for a bill of door jambs from Long-Bell Lumber Company, representing a purchase I made from them.

"Mr. Clark: We will offer it in evidence.

"Mr. Faulkner: We object to it as irrelevant, immaterial and incompetent, and hearsay as to the defendants.

"The Court: Overruled.

"(The invoice was marked 'U. S. Exhibit No. 155.')

"Mr. Clark: I am going to read a portion of it, your Honor, so that the jury may know what it is about. This is an invoice on the stationery of the Long-Bell Lumber Company, Long-Bell Products, Kansas City, Missouri, sold to Greater City Lumber Company, 3123 Mission Street, San Francisco, shipped to same, Pier 40, San Francisco, California, dated December 31, 1938. It sets out:

" 'Douglas Fir

" '102 sets 1x5 2'8"x6'8" stops VG door jambs, per set, 64 cents, \$65.28.

" '200 sets 1x6 2'8"x6'8" 'T' stops VG door jambs, per [315] set, 77 cents, \$154.00.' Making \$219.28, plus California State tolls at 10 cents, \$219.63."

I received that millwork the early part of January, and put it in my stock in the warehouse. I was told, by a representative of the union—I believe his

(Testimony of Willard B. Jefferson.)

name was Helbing—not to sell it, or rather, not to bring any more in, that I couldn't sell it unless it had the union stamp on it. I was told, by a man who represented himself as coming from the unions, I would not be allowed to deliver these jambs to jobs in San Francisco, unless they had the local union stamp on them. I arranged to have them run here at a local mill and the stamp put on. I think it was the Acme Manufacturing Company. They put them through the mill. I don't know just what they did. They came back and had the stamp on. I saw the lumber before and after it came back. I saw no appearance of any work being done on it. It was manufactured according to a special size. If it had been rerun it would not have fit; would have been too small for the purpose for which it was intended. I have not attempted to buy any more millwork, patterned lumber outside of the State. I don't think I have had any more word from Mr. Helbing or the union representative. I am familiar with the price charged for this lumber and remember approximately the price charged for lumber of a similar kind bought from a local manufacturer. On the two items of door jambs, to have bought them locally would have been about one-third more than those invoice prices shown.

Cross-Examination

By Mr. Routzohn:

The lumber when it came did not bear the local union stamp. I think it did bear a stamp of some

(Testimony of Willard B. Jefferson.)

kind, but I am not sure. I could not say whether it bore the stamp of the United Brotherhood of Carpenters and Joiners of America. I never paid any attention. I couldn't say that I know the stamp. I have seen the label of the United Brotherhood a great many times. I don't remember if it [316] bore that stamp. I took particular notice that it did after it was rerun—the stamp of the local Millmen's Union. I don't know if that was the stamp of the United Brotherhood.

“Mr. Routzohn: Q. Was it non-union lumber that you purchased at that time?”

“Mr. Clark: I object on the same grounds. (Immaterial, irrelevant, and incompetent.)”

“A. As far as I know, it was.”

“The Court: Sustained.”

“Mr. Routzohn: That is all.”

ALBERT BERNHARDT

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I am a building contractor and have been for some 20 years. I am affiliated with Associated Home Builders of San Francisco. I am at present a director. I was president for 5 years until last year. I know

(Testimony of Albert Bernhardt.)

Dave Ryan and participated with him in a conference with members of my association in 1938. There were many conferences based on negotiations in regard to a labor contract between representatives from Associated General Contractors, East Bay Building Council, Marin County, San Mateo County, and ourselves. There were representatives of the carpenters of San Francisco, Marin and all other Bay counties. There was Alexander Watchman. I recall the last meeting at which we reached an agreement.

“Q. Will you tell us, was anything said after you reached that agreement with respect to any matters not in the agreement?”

“A. Well, the statement was made——

“Mr. Faulkner: The same objection heretofore made.

“The Court: Overruled.

“Mr. Zirpoli: Q. By whom?

“A. I could not say, I do [317] not recall.

“Q. Was it a union representative or a building representative?

“A. It was one of the representatives from the union.

“Q. What did the representative of the union say?

“Mr. Routzohn: We object to that as being immaterial and irrelevant.

“The Court: Overruled.

“Mr. Routzohn: We certainly should know the individual who is supposed to have made this remark, or we could not be bound by the statement.

(Testimony of Albert Bernhardt.)

"The Court: I am sure that the witness will name them if he remembers the names.

"A. I can't recall who made the statement in 1938.

"Mr. Zirpoli: Q. Was Mr. Ryan present?

"The Court: The objection is overruled."

A statement was made at the end of the negotiations that we had overcome all our difficulties up to now and while it was not specifically put in the agreement that it would be understood that we would have no further trouble with, or no trouble with any of the stuff from the north. We were talking about elimination of our difficulties. There was the wages and hours and working conditions, and the demand of the Union representative for the scale of wages they were asking, and many things we wanted. I think we were in negotiations for about six weeks, but those were the main points we discussed. No reference was made to bringing in lumber from Washington and Oregon into the Bay district, except this last statement which was to the effect that we had all our difficulties ironed out, and while it was not a specific part of the agreement it was understood that we would not have any difficulties with the material from the north.

EMORY J. NUTTING

called as a witness in behalf of plaintiff, was duly sworn and testified as follows: [318]

Direct Examination

By Mr. Burdell:

I am in the planing mill business and have been for 32 years. I manufacture building materials, all kinds of wood products, including millwork and patterned lumber. My company was a member of Lumber Products Association, I think from around 1936 until 1938 or 1939. We were a member in 1936, during the period they were negotiating an employer-employee agreement. I attended meetings of the L. P. A. during that period, for the purpose of coming to some agreement or understanding with the unions as to wages and conditions. No union representatives were present. They were meetings of the L. P. A. alone. Mr. Carl Warden and Mr. Jack Hart were appointed, to meet with union representatives about the matter, a committee to negotiate with union officials. They reported back their negotiations with the unions to the members of the L. P. A. I recall members of the L. P. A. at that time. There was Acme Manufacturing Company, Hart Mill & Lumber Company, Eureka Sash & Door Company, my firm, Herring & Nutting, Sage & Wilder, Warden Bros. and Liberty Mill & Cabinet Shop, and Branning Street Planing Mill. Charles Monkton represented Acme; J. A. Hart, Hart Mill & Lumber Company; Carl Warden and his father, represented Warden Bros.;

(Testimony of Emory J. Nutting.)

Mr. Wiley and Mr. Gustafferson, Branham Street Planing Mill; Mr. Holmes for W. P. Holmes Company; Jesse Sage, and sometimes Mr. Wilder, for Sage & Wilder; Mr. Tanklage, for Liberty Mill & Cabinet Shop.

"Q. Now, Mr. Nutting, do you recall the substance of what Mr. Warden and Mr. Hart reported back to the members of the L. P. A. regarding their negotiations?

"Mr. Faulkner: We object to that as immaterial, irrelevant, and incompetent and hearsay as to the defendants.

"The Court: Overruled. What did they report back?

"A. Well, they reported back that if we agreed to the conditions [319] that the unions wanted the union would do all in their power to keep all of the work here."

That they would keep the millwork products that were manufactured here, we would make it here.

Exhibit 156 for identification (1936 agreement) is a copy of the agreement entered into between the union and the millmen, signed by Mr. Hart for the members of the L. P. A., whom I have just named, was introduced as U. S. Exhibit No. 156.

Cross-Examination

By Mr. Routzohn:

The firm of Herring & Nutting has been in existence from 1928. I first started in the planing mill

(Testimony of Emory J. Nutting.)

business in 1909, with Spencer Street Mill which remained under the name, Spencer Mill, until 1928, when Mr. Herring bought my partner's interest and we changed the name to Herring & Nutting. I have been a mill owner since 1909, engaged in practically the same work as at the present time.

"Q. Do you recall whether or not back in 1917 you had an agreement with the union men who represent the Carpenters Brotherhood?

"Mr. Burdell: I object to that as immaterial and not proper cross examination.

"The Court: What year?

"Mr. Routzohn: 1917, your Honor.

"The Court: Sustained.

"Mr. Routzohn: Q. Did you have an agreement with the unions in 1932?

"Mr. Burdell: Same objection.

"The Court: Sustained."

I believe we had an agreement with the unions in 1935. I couldn't positively tell whether there was a mill owners' association in 1935. We had several associations and on account of business depressions they would break up and then would start [320] again. Our present association is known as Lumber Products Association. We had a prior association—I don't recall the name. I am not sure of dates, but for a long time the mills worked open shop and then there was a start where we went union shop. From that time on as long as we were union shop we always had some kind of meetings with the unions. An

(Testimony of Emory J. Nutting.)

open shop is what they termed the American plan. It meant you hired whomsoever you pleased and paid no attention to the unions. We were an open shop for a long period of time. It went back somewhere around the early '20s. The unions were always trying to get the men organized. Then they finally did and made demands on us which we agreed to. We agreed to unionize our shop, I think somewhere around 1934 or 1935. After that we had negotiations with representatives of the unions. A committee of the mill owners would meet with a committee of the union men. The idea was to facilitate negotiations with the representatives meeting and save us the trouble as individuals to meet with them. I know there were meetings of representatives of the mill owners with representatives of the unions in 1936. The unions were asking for a raise in wages in 1936. The mill owners got together and named representatives who should negotiate for all the shops. I remember Mr. Hart and Mr. Warden were two representatives of the mill owners. There might have been more. It was the purpose of these negotiations to attempt to arrive at some agreement. I would say my best recollection as to the period of time covered by the negotiations was 3 months.

“Q. Three months. During all of that time, Mr. Nutting, there was a dispute on, was there not, between the unions on the one hand and the mill owners on the other as to the rate of wages?

“Mr. Burdell: Just a moment. That calls for a

(Testimony of Emory J. Nutting.)
conclusion of the witness and is improper cross examination and immaterial.

"The Court: Sustained. [321]

"Mr. Routzohn: Q. Was there any other dispute on at that time?

"Mr. Burdell: Same objection.

"The Court: Sustained.

"Mr. Routzohn: I haven't asked my question yet.

"The Court: Well, the question is objectionable so far as it has gone, 'Was there any other dispute?'

"Mr. Routzohn: Q. What were these negotiations that lasted three months?

"Mr. Burdell: Objected to.

"The Court: It is quite clear the negotiations related to wages and with reference to an agreement and it was signed. Isn't that quite plain? Why take up time cross examining on that subject?

"Mr. Routzohn: If your Honor thinks I am taking too much time, I will desist.

"The Court: Well, I think it is quite clear what you are trying to show by this witness.

"Mr. Routzohn: Yes. Your Honor in the very beginning told us we would have to establish that there was a labor dispute. That is exactly what I am trying to show.

"The Court: You have asked him if there was a labor dispute, which you have no right to do.

"Mr. Routzohn: The witnesses have been asked for many a conclusion at this trial, I have noticed.

(Testimony of Emory J. Nutting.)

"The Court: That may be so."

I don't think there was a strike in 1935. The agreement was signed by representatives of our organization on September 21, 1936. There was no other demand made that I know of, after we signed this agreement. I believe that they had negotiations right along. I didn't ever take that as disputes. Demands or requests continued, on the part of the unions, after [322] we signed the agreement calling for negotiations between mill owners and the unions. We had negotiations in 1937. I don't know what they pertained to. We had negotiations in 1938. They always met for the good of each other. In other words, they would work for things that were mutually advantageous. There was a larger wage scale granted in 1938, but I couldn't tell you what date that was. I don't know what gave rise to the negotiations in 1938. I know in 1938, they finally agreed to arbitrate their differences and there was an arbitration board appointed. I know there was an arbitration award in 1938, which was made after there had been negotiations over a period of months. I don't know that certain mill owners refused to accept the award. I dropped out of the association and don't know what they were doing in about 1938 or 1939. I don't remember of any strikes following the arbitration award in 1938. There was no negotiation with me in 1939. I recall there were negotiations with Lumber Products Association only by hearsay. I believe there are some negotiations going on now.

(Testimony of Emory J. Nutting.)

"Q. Yes, and in 1941, throughout some five or six months of this year, even up to the present day, isn't there an arbitration board sitting for the purpose of determining the disputes that are on at the present time between the mill owners and the unions?"

"A. Yes."

"Mr. Burdell: Object to that as irrelevant."

"Mr. Routzohn: That is all."

"The Court: The objection is sustained and the answer may go out."

"Mr. Routzohn: Please mark an exception."

"The Court: You have it."

Minute books marked U. S. Exhibit No. 157 and U. S. Exhibit No. 158, being records of Alameda County Building and Construction Trades Council were introduced in evidence, subject to a motion to strike, should they not be connected up.

"Mr. Burdell: I desire to read from Exhibit 157, the [323] minutes of February 28, 1939, 'Brother S. J. Donohoe. Mr. Chris M. Winger, Manager of the Pyramid Lumber Sales Co. appeared before the Board at the request of Millmen's Union No. 550 to show cause why he should not be placed on the 'We Don't Patronize List.' Business Agents O'Leary and Patterson stated their case against Mr. Winger, relative to his importing unfair lumber into the Bay district. Mr. Winger stated his case and admitted the charges were true, but assured the Board it would not occur again. Recommended that Mr. Winger be notified that unless he fails to live up to the agree-

(Testimony of Emory J. Nutting.)

ment of the Millmen's Union, Teamsters, Clerks and Lumber Handlers, and Building Trades, he will be placed on the 'We Don't Patronize List.' (Concurred in.)"

"Mr. Burdell: At this time I would like to read from Exhibit 158.

"The Court: What is that?

"Mr. Burdell: This is the other book we had produced.

"The Court: Are there two volumes?

"Mr. Burdell: There are two volumes. This is page 20:

"Board of Business Agents"—

"Mr. Todd: Will you give the date?

"Mr. Burdell: I am just about to read that.

"Board of Business Agents met in regular session on March 11, 1940, Brother Kelly presiding.

"Mr. Brown, of Ready Cut Homes, appeared before the Board at the request of the Carpenters' Union in regard to information on the Aladdin Ready Cut Home, which is being placed on the market. Recommended that the subject be further investigated by the Carpenters' Union and the Building and Construction Trades Council. (Concurred in.)"

EDWARD A. ALLEN

called as a witness in behalf of plaintiff, was duly sworn and testified as follows: [324]

Direct Examination

By Mr. Clark:

I am in the retail lumber business. My firm is Allen & Dettman Lumber Company. I have been in the lumber business 36 years, handling mostly building material, coarse construction work. We handle mill-work and patterned lumber, to complete a full bid. We handle soft wood fir, such as is used in a large assembly room. It is not the material that is put on top, the finish.

We purchased material from outside the State in 1939. I remember a purchase in 1939 covered by the paper marked U. S. Exhibit 159 for identification. We made a purchase in 1939 from Pope & Talbott Company, who have about three mills in Washington. It was tongue and groove used for roofing, and that is not a dry grade of lumber. Dried grade of lumber is lumber treated, kiln dried to take all the moisture out of it. For that reason, it is not put in flooring, but in this case, this green lumber they could use on a roof, because there is a covering over the top. The lumber was for roofing in this case. It arrived by boat approximately two blocks away from our plant in San Francisco. It was hauled into our yard and there assembled for delivery, by truck, to South San Francisco. We received the lumber in our yard. It did not have a stamp and a man went to the

(Testimony of Edward A. Allen.)

yard and said: "That lumber would have to be stamped before it was delivered to its destination." I could not say who it was—who told me that. I don't remember if he identified himself as being connected with any particular group. He told us we would have to have the union stamp on it.

"Mr. Róutzohn: I will ask that all of this testimony be stricken out because he has not identified anyone connected with the defendants in this case.

"The Court: Denied.

"Mr. Clark: We will connect that up later, your Honor. [325]

"The Court: Very well."

We had to send the lumber to a manufacturing mill to put it through the machine and put the union stamp on it, and it was hauled back to our yard and delivered to the destination. It was sent to Christianson Lumber Company, who placed the stamp on it. They did nothing else to it as far as remanufacturing it. I believe they charged \$1.75 per thousand feet. After we got it back we put it on our trucks and delivered it to destination. I believe it was something like 28,000 or 30,000 feet of lumber involved in that rerun.

I have been in business with our firm for seven years and connected with Pope & Talbott since 1906, 30 years.

"Q. Are you familiar with the price in San Francisco of that same grade of lumber that you purchased, if it had been manufactured by a local mill?

(Testimony of Edward A. Allen.)

"Mr. Routzohn: We object to that as being immaterial, irrelevant, and incompetent.

"The Court: Overruled. If you know.

"A. At that time?

"Mr. Clark: Yes—Do you mean the differential?

"Q. Between the lumber which was purchased here from Pope & Talbot and the price of the same grade of lumber, here in the San Francisco area, from a local mill or shop?

"Mr. Routzohn: I will object to that for the same reason.

"The Court: Overruled.

"A. This lumber here in question is green lumber; if that lumber was taken out of San Francisco stock, it might carry two different prices, for the simple reason, if that lumber had been brought into the yard and placed in piles to dry, and then taken out and sent to a mill, it might carry a different percentage than that same lumber if it had not been placed in these piles.

"Q. What would have been the price had it been placed in piles [326] that you just described, the difference? A. Forty or fifty per cent.

"Q. If it was taken straight from stock, not put in piles and worked on immediately, what would be the percentage of difference?

"A. 25 or 30 per cent."

(Testimony of Edward A. Allen.)

Cross-Examination

By Mr. Routzohn:

My firm is not connected with Pope & Talbot Company in Washington. We purchased that lot from them, they are wholesalers. When I first started in the lumber business, in 1906, I was employed by Pope & Talbot about 25 years. The concern was turned over to the McCormick Lumber Company and when it gave up business, the former employees of both concerns formed Allen & Dettman Company. We bought this particular shipment of lumber from Pope & Talbot. I believe it came from Port Gamble, Washington. I don't know whether the mill was organized, either CIO or AFL. The lumber that came down here was not stamped with the union label of the United Carpenters and Joiners of America. I couldn't say if it was non-union lumber. It did not bear a union stamp but the remanufactured did.

(By Mr. Clark:)

"Ladies and gentlemen, I am reading from the minutes of the defendant Local 42, Exhibit 8, as of February 21, 1939:

"7,000 feet of T&G to be used for roofing at South City supplied by Allen & Dettman will be rerun through machine."

"Now, your Honor, we would like to read from Exhibit No. 7, which was previously introduced in evidence, the minutes of the defendant Local Union No. 42, meeting of October 5, 1937:

◆ 'Conference Committee: Reported that 2x6 and T&G flooring were being put on the Fairgrounds. A meeting for discussion of this matter was held with the mill owners.' [327]

"Now, your Honor, from the minutes of the defendant Local 42, being Exhibit No. 8, from the minutes of January 18, 1938, of the defendant Local No. 42:

"'Brothers Reinhart & D. Johnson reported Shevlin Pine or Knotty Pine, milled lap, rustic, and milled Ceiling being brought in from the North by Doelger and Rolando Lumber Company. The Conference Committee was requested to take action on the matter.

"'The chair appointed the following as members to the 'Agreement Committee' to meet with the officers of this union for the formulation of plans for a new agreement with the mill owners. A. W. Edwards, D. Johnson, D. J. Edwards, Otto Sammett, J. Westby, A. Weiss, W. P. Kelly.'

"Now, the minutes of the same local, February 8, 1938:

"'Matter of dimension lumber, panels and stock moldings and doors also discussed. Opinion being that these items should be taken from 'exempt' list.'

"Now, the minutes of the same defendant of the meeting of March 1, 1938:

"'District Council of Carpenters delegates reported Walker job of matched end T&G was to be run by E. K. Woods of Oakland.'

"The same minutes of the same union as of the meeting of March 15, 1938:

"Good of the Order: Brother Byrnes reported dimension lumber cut to length and bevels being brought in by boatloads for the Exposition construction. Referred to B A for investigation."

"The minutes of the same local union for March 22, 1938:

"The Conference Committee reported on two meetings held last Friday morning and Monday afternoon with a group of mill owners for discussion on 'exempt list' surfaced lumber. No [328] definite conclusions having been arrived at, further meetings were to be scheduled."

"The minutes of the same defendant from the meeting held April 19, 1938:

"B A Report. Christianson Lumber Co. pickets on Northern shipment 11½ x 6 T&G. Also Coos Bay 2 x 6 shipment picketed."

"Brother Arnold reported jams *ect.* coming in from McElroy Cheim. No stamp."

"Discussion arose on Wheeler and Osgood doors being molded and stamped by local stamp No. 6."

"Brother Helbing stated that mill stamp was not properly enforced and that the carpenters were not demanding stamped material. Fight of Local No. 42 was to see that carpenters do enforce stamp. Pledge to mill owners to enforce stamp not carried out, and it may become injurious to coming negotiations."

“The question of stamp enforcement consumed a lengthy period of time, ways and means argued to enforce same.

“Brother Knowles stated that doors in question in regards to not being stamped, one of same be bought and brought up to the local as evidence.

“Santa Fe job recalled that Brother James Ricketts had promised that carpenter would not install any unstamped materials.”

“The minutes of the same defendant of April 26, 1938:

“Motion made and seconded Brother Fromm, that material at Christianson be run through the machines. Carried.”

“The minutes of the same defendant from the meeting of May 10, 1938:

“B A reported he made two trips to Fairgrounds, also stated that no more trim for Doelger was coming from up North. He also stated he would have the brothers here to talk on the 1½ x 6 T&G. Cards were sent.”

“Also minutes of the same defendant, Local No. 42, meet- [329] ing of May 24, 1938:

“B A reported that our new agreement had in it to strike out all exempt list, especially sash and doors.”

“The minutes of the same defendant, Local Union No. 42, the meeting of July 12, 1938:

“B A Edwards reported all T&G not on the exempt list, on the shoal was to be sent back and run through machine.”

"Same minutes for August 2, 1938:

"Conference Committee: Brother Kelly reported that the District Council of Carpenters and Building Trades had approved our new agreement.

"Minutes of the same defendant for August 16, 1938:

"A car of T&G from Daugherty Lumber Company slipped by and had gone over to the shoals.

"Oakley mill received a carload of molding and casing it had no label, however it was made in a forty-cent mill in the North."

"August 22, 1938:

"Daugherty Lumber Co. have a shipload of 11½ x 8 inches the rough to make T&G in a San Francisco mill. Also these people have six loads of 1 x 8 T&G on the dock. A picket watching this T&G so it is not slipped over to the shoals. Asking all members to put the stamp on all millwork. P M was going to dump a load of millwork without a stamp, forced them to take the load back to Santa Clara."

"The same local, minutes for the meeting of September 13, 1938; this is a report by B. A. Wilcox:

"Will make a trip over to the shoals Wednesday to check on the knotty pine sent there by the Northern Pine Company."

"Conference Committee: Brother Kelly reported that Brother Ryan had gone back to General Office to appear before the executive board to state the case of the millmen in the Bay [330] Dis-

trict. May be trouble in Oakland and want to be ready for it. Received a phone call from the shoals stating that knotty pine for seven houses was being unloaded without a stamp. Recommends that Brother Edwards be placed back on the job as Assistant Business Agent.'

'Minutes of October 11, 1938:

" 'Brother A. Edwards: Mr. D. N. Edwards is fighting for his 11½ cents of sales. Don't think he has control of association in Oakland. Said at one time he would upset the agreement. If we take \$8.50 would he (Mr. Edwards) throw out his exempt list. No answer. Brother Cambiano is not in favor of Mr. Edwards' program.'

'October 11, 1938:

" 'Brother Kelly: Have \$21,000 in on assessments. Read a letter from the secretary of Mill and Cabinet Associations. That we concur in the recommendation of committee to give the shops and mills in San Francisco and San Mateo protection.'

"Minutes of the same defendant of October 18, 1938:

" 'Jones Lumber Company received a load of knotty pine from the North; and will go there in the morning.'

"That is the report of officers and delegates and B. A. Wilcox, business agent.

"The same minutes of the Local Union 42 for the meeting of November 1, 1938, the shop committee report:

“Brother Reinhart: A carload of doors for Buckley from the North. B H stamp No. 6.”

“The same minutes for November 15, 1938:

“Cambiano, O’Leary and himself (Wilcox) signed up Mr. Edwards in Oakland.”

“The minutes of the same local union for November 22, 1938:

“Visitors: Mr. Ennes, secretary of Cabinet Manufacturers [331] Association, was a visitor, and president Lidley allowed him the floor. Mr. Ennes said he appeared before Local No. 42 in place of Harry Gaetjen, secretary of the mill owners. Mr. Ennes’ talk was greatly received and Brothers Voight, Brock and Brothers Miller, Kelly, Fate asked him (Mr. Ennes) plenty of questions. Mr. Ennes answered these questions. Brother Helbing asked president Lidley to excuse Mr. Ennes and the local take the matter of Mr. Ennes’ suggestions later on.”

“Continuing to read from the same minutes of Local 42, the meeting of December 13, 1938:

“Communications: From Cabinet Manufacturers Institute of California, Inc. and Lumber Products Association, Inc., request Local No. 42 to place another business agent in the field, and would like to have this cooperation very soon. Read and placed in the hands of committee dealing with the matter.”

“The same date, report of officers, delegates and committees:

“‘B A Wilcox: Smith Lumber Company have a load of 1x8 T&G from the North. Load of 2x3 for a job on Townsend Street was to have the union label. Shop in Oakland was going to run this material, did not have a stamp, will be milled in San Francisco in a union shop.’

“The minutes of December 13, 1938; this is the report of officers:

“‘B A Wilcox’—‘state mill committee meeting at Fresno, Brother Kelly: There were about 40 delegates at the meeting. L A had no delegation. The secretary of District Council of Carpenters was present. San Jose, Local No. 262 presented a resolution to oppose outside millwork to come in California. Brother Blanchfield reported on the job at the State Capitol how the Sierra Mill of Sacramento sublet the doors to a firm in Wisconsin with a difference of \$9,000 in the bids.’ [332]

“The meeting of January 3, 1939, of the same defendant:

“Report of B A Wilcox: T&G for the Shoals to be run in San Francisco.’

“The same minutes of Local 42 for the meeting of January 17, 1939:

“‘New Business. Brother Kelly reported of a meeting to be held Wednesday afternoon, January 18th. Brother Ryan secretary of District Council called this meeting for the purpose of presenting the agreement approved by the General Office before the Cabinet Association and Lumber Products Inc. in San Francisco. The committee of No. 550 and No. 42 should meet and report back to the local

unions. We should try to get rid of the exempt list."

"The meeting of February 7, 1939 of the same union:

"Spec. B. A. Helbing: Re: The case of Fred Warden and Son taken up with the building trades and will place Warden on the unfair list. Had to take this step to bring Doelger around. Davis Hardwood is supplying material for a job on Washington and Presidio. Davis has about 100 six-panel doors made in the North without the label, and was going to try to slip them over on this job. Now his story is he will send these to the country and make the doors for San Francisco use. Liberty Mill supplying the front doors with a label for this job. Symon Brothers are not buying doors in this locality, stated the price too high. Said to buy lumber and make the doors in the future. Had a meeting with John O'Connell, secretary of Labor Council, and business agent of Coopers re: to the Winall plant. At the present time have 17 coopers and 2 millmen. All men working on stickers, matchers and resaws should belong to this union. West Bay Lumber Company in San Mateo have one-half carload of knotty white pine coming in this week and loads in the yard without a stamp. Business of San Mateo and business agent Helbing are going to take this matter up this week. Report received in re: to the mill on Army Street. [333] Brother of Local No. 42 has a small shop in San Mateo. * * * The Nicolai Door has glass

workers and millmen working on unfair material. Men were allowed to work on this material at the time it was on the exempt list. Mr. Yates of the Buckley Door Company stated they will have all their material run in this locality in the future. The Building Trades could have stopped some of the material coming into this locality to be used on PWA work if they had protested earlier. Recommend that Brother Helbing take up the matter of the Nicolai Door and report back next Tuesday.

"The meeting of the same local, February 14, 1939:

"Report of B A Helbing. West Bay Lumber Company have a great deal of molded knotty pine from the North. Brother Simmonds and myself went to these people and explained the situation. P M received the work on the Samuel Gompers School. Visited Sacramento with Brother Wilcox. Had taken up the matter re the Bond Stores Inc. with the Building Trades. Cleveland Wrecking Co. does not want to do business with this union. Davis Hardwood re: to doors on the Washington and Presidio job. Davis trying to say he made these doors part of the one hundred he had in the mill without the stamp he promised to send to the country last week. Pacific Gas Appliance have a job on the Shoals, cannot contact party in charge. Phoned Mr. Ennes in re: to a shop on 17th and Folsom reported unfair: Re: the Nicolai Door. This shop is organized. Party knows all about the agreement.

Does not sell doors to mills or contractors, only lumber yards. Secretary of Mill Owners stated let's get new agreement then proceed. * * * Carload of milled material from the North for the Posey Lumber Company told these people that material was not allowed, they promised not to have any more shipped into San Francisco.'

"The meeting of the same local for March 7, 1939:

" 'Reports of officers, delegates and committees. B A Wilcox reports: Sent out about eight or ten men to jobs this [334] week. * * * Attended meeting Friday with mill owners.'

"Report of March 28, 1939:

" 'B A Wilcox: Spending most time going around and making reports on the millwork used by the building contractors. All 100 per cent to date. Attended meeting this p.m. at the Mason Hall in regards to the Fed. Housing Program: Millwork to be made in S. F. Routine. B A Helbing: Going around checking on the shop steward committee reports.' "

JAMES L. McNALLY,

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am court reporter, Superior Court, San Francisco. I was formerly secretary-manager of Build-

(Testimony of James L. McNally.)

ing Trades Employers' Association, from November, 1937, until the early part of 1940. Building Trades Employers' Association is still in existence, but inactive in operation. It was an organization composed of the different employer associations engaged in the building industries in San Francisco, formed principally for the purpose of fostering and improving labor relations. Employer associations members of the Association were: The Associated General Contractors of America, Central California Chapter—AGC, Central California Chapter; the Master Plasterers' Association, the Cabinet Manufacturers' Institute, Lumber Products Association, The Associated Roofing Contractors, the Steel Erectors' Association, the Reinforced Steel Concrete Institute, the Sheet Metal Contractors' Association. That is all I can recall at the present time. There were a few more. Each of these associations had delegates that attended meetings of the B.T.E.A. Mr. Hart was the delegate from the Lumber Products Association; Mr. J. G. Ennes from Cabinet Manufacturers' Association. As secretary, I kept minutes of the proceedings of [335] the B.T.E.A. as part of my regular duties. I made notes during the meetings in the regular course of business. The minutes are transcriptions from the notes made within the course of a day or two by myself. Minutes referred to are U. S. Exhibit No. 160 for identification. Letter marked U. S. Exhibit No. 161 for identification is

(Testimony of James L. McNally.)

a letter addressed to Building Trades Employers' Association, to my attention.

"Mr. Burdell: I understand that it is stipulated that this is Mr. Ennes' signature, and I want at this time to offer this letter in evidence.

"Mr. Faulkner: We object to it as immaterial, irrelevant, and incompetent, and hearsay as to the defendants, dividing the objection as to Mr. Ennes as an individual, and any other defendant represented by it, and upon the further ground that there is no foundation laid that communications between a member of the Building Trades Employers' Association is a part or parcel of the conspiracy charged here. In other words, there is nothing illegal about all of the employers in San Francisco having an organization among themselves for their own protection, and the things that happen in that organization are not part and parcel of the conspiracy charged in this indictment, and could never be; and we submit that it is absolutely hearsay as to the defendants. Of course, as to Mr. Ennes, individually, it is not hearsay, but it would be immaterial as to him and hearsay as to all other defendants in the case.

"The Court: Overruled.

"Mr. Routzohn: The same objection.

"The Court: Overruled."

(Testimony of James L. McNally.)

Cross-Examination

By Mr. Faulkner:

I am the James L. McNally referred to in the paper I identified. The J. G. Ennes referred to in the letter is [336] Mr. Ennes sitting at the table. I received the letter in the regular course of business. No reply was made to it.

Thereupon, the letter was read, as follows,

By Mr. Faulkner:

“ ‘Cabinet Manufacturers Institute of California,
Northern Division 411 Call Building, San Francisco,
July 20, 1938.

“ ‘Building Trades Employers Association,
666 Mission Street
San Francisco

“ ‘Attention Mr. James L. McNally, Secretary

“ ‘Gentlemen:

“ ‘We are handing you a copy of the Arbitration Board Award. The purpose of this letter is not to deal in retrospect but to be forward looking.

“ ‘The Employer member of the Board and their Technical Advisor signed the award as dissenting to the rate of wage. This is not to be in any sense understood as meaning that the Employers are not going to carry out the award in spirit and in fact. They are, and have signed a contract embodying the Award.

“ ‘Arbitration is a medium of adjusting economic differences between the Employers and Organized

(Testimony of James L. McNally.)

Labor to the end that the Employer, Employee and the Public be saved the consequences of industrial strife.

“We have subscribed to ~~that~~ policy. The B.T.E.A. agreement with Organized Labor as to arbitration, of which we, as members, availed ourselves, is in our opinion, epochal as a mass arbitration agreement.

“Neither in opening argument nor in rebuttal could we hold that the employees of Mill and Cabinet Shops were less skilled than certain other crafts of the construction industry receiving substantially higher rates of wage established by negotiation and arbitration. Nor could we give factual reasons for the present spread between the carpenter's wage as compared to [337] the past spread. Excepting that since 1921 we have had to face in our bidding economic horizons having lower rates of wages than those set up by our agreement and to be competitively sound, our rate of wage should not be appreciably higher than that of the competition we have to meet.

“The Arbitration Board has handed down an Award of ~~\$9.00 and \$8.00~~, which is the all time high in rate and the highest in percentage when compared to the carpenters' since 1921. The Arbitration Board has also said:

“‘Maintenance of Fair Labor Conditions.

“‘It is the unanimous decision of the Arbitration Board that the new agreement should include

(Testimony of James L. McNally.)

a provision to the effect that it is deemed to be for the best interests of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement.' "

" 'The rate of wages and the paragraph referred to are reciprocal, and that we may live up to the terms of the award we ask for the cooperation of all responsible parties.

" 'This award, and in our opinion, all recent awards and agreements point clearly to the necessity of the B.T.E.A. functioning as a repository of certain factual economic experiences rather than opinions.

" 'We expressed our viewpoint along this line at the last meeting, so will not go further into the matter here.

" 'We wish to emphasize that this letter is not to be in any sense construed as critical of the award of the Arbitration Board. We hold the Board prevented strife, once embarked upon, the consequences of which are limitless. The neutral Chairman measured to the full stature of what we deem a neutral Arbitrator should [338] be and the respective Arbitrators and Technical Advisors of the Employers and Employees used the 'rule of reason.'

(Testimony of James L. McNally.)

“We take this occasion to thank the B.T.E.A. for the material assistance they gave us in this matter.

“Very truly yours,

“CABINET MANUFACTURERS INSTITUTE OF CALIFORNIA, NORTHERN DIVISION,

By J. G. ENNES, Manager.”

“(The document was marked in evidence as ‘U. S. Exhibit 161.’) The neutral arbitrator referred to in the letter was Judge Walter Perry Johnson, a Superior Judge of the City and County of San Francisco.

JAMES DAVIS

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am vice-president of Davis Hardwood Company, wholesalers and dealers in hardwood lumber, millwork, and who also have a planing mill. We buy and sell lumber and also manufacture the lumber into millwork; We have our own machinery. Our company is not a member of Lumber Products Association, and it has never been a member of that association. It was invited to join that association

(Testimony of James Davis.)

by Mr. Gaetjen, around 1938, 1939. He asked at three or four different times for us to be a member.

Government's Exhibit for identification 162 was sent to me through the mail by Mr. H. W. Gaetjen, at about the time he contacted us relative to joining the association.

"Mr. Burdell: I offer it in evidence.

"Mr. Faulkner: We object to it as incompetent, irrelevant and immaterial, not an act or declaration pursuant to the charge in the indictment, and hearsay as to the employer defendants here on trial; not binding upon them. [339]

"Mr. Routzohn: The union defendants join in the objection.

"The Court: Overruled.

"(The letter was marked 'U. S. Exhibit No. 162.')

"Mr. Burdell: With respect to this letter, your Honor, I will read it at this time, if I may.

"The Court: Very well.

"Mr. Burdell (reading): 'Lumber Products Association Inc.

" 'Rm 439 Call. Bldg.

Yukon 2081

San Francisco, California

September 26, 1938

"Gentlemen:—

" 'The Lumber Products Association Inc. was organized in June, 1938, by the Planing Mill owners so as to discuss as a unit with the District Council of

(Testimony of James Davis.)

Carpenters the question of a new working agreement.

“ ‘Being unable to come to a satisfactory understanding it was agreed to arbitrate the question, the Building Trades Employers Association was asked to name the Arbitrator, which it did by naming Walter Perry Johnson, a retired Superior Judge of this city as the Arbitrator.

“ ‘After several hearings he handed down his decision on July 15, 1938, awarding a dollar a day increase in wages with a protective measure that work should not be handled by the carpenters unless made under the same conditions, which for obvious reason should be of great benefit to us, and with the cooperation of labor we are working for the betterment of the Mill Industry, namely, the prevention of Bid Peddling by contractors or builders, the respect of Bids given before the award of a contract and the discouragement of Bid cutting, along with all the rest of menaces of the game.

“ ‘We have established an office in Room 439 of the Call [340] Building, 74 New Montgomery Street, San Francisco, the undersigned being Secretary. Your membership is hereby solicited. I would appreciate a visit or call from you to discuss the details of our organization.

Yours very truly,

LUMBER PRODUCTS ASSOCIATION INC.

By H. W. GAETJEN

Secretary”

(Testimony of James Davis.)

Cross Examination

By Mr. Faulkner:

We are in the hardwood lumber business and sell doors and moldings, veneers, plywood; we have our own planing mill; general millwork. We sell cabinet makers. I know Mr. Emanuel—we deal with L. & E. Emanuel and have for the last forty years. We have dealt for many years, I will say twenty years.

“Mr. Zirpoli: May it please your Honor, at this time I respectfully ask leave to read from Exhibit No. 6 in evidence, which is the minute book of Millmen's Union No. 42, the volume covering the period from April 4, 1939 to November 26, 1940. I will first read from the minutes from April 4, 1939:

“‘Posey Lumber Company received a carload of knotty pine, told to have it re-run.’

“I now refer to the minutes of April 11, 1939:

“‘Brother Cambiano, of the General Office, spoke on the matter of the new agreement, stated what happened at Santa Clara will not happen again, the matter pertaining to the exempt list will be a battle. Mr. Ennes called up and wanted the *close* shop paragraph out for fear of court trouble. P.M. Agreed to arbitration clause. Some of the mill owners want a bigger exempt list.’

“The next meeting was the meeting of May 9, 1939: [341]

“‘Stopped 31,000 feet of T. and G. in San Mateo that was re-run at the Coos Bay Mill in Oakland. This mill has hired union men at all times but does

not have a Union Label. Some of the brothers asked B. A. Helbing about the non-union sash and molded knotty pine coming into S.F.'

"The next is a meeting of May 16, 1939:

"It was reported that the Greater City Lumber Co. was bringing milled material in S.F. and B. A. Helbing take the matter up with these people.'

"The meeting of June 20, 1939:

"Conference Committee: Brother Helbing stated that the Gen. Pres. will not agree with the last two lines in the agreement in paragraph 2. Gen. Pres. said these lines leave it too wide open for anything to come into the locality.'

"Meeting of June 27, 1939:

"Conf. Comm. Brother Miller reported had a meeting Thursday evening and wired Cambiano, who was in Los Angeles, when he could come to San Francisco. Had a meeting Sunday morning Cambiano present. Brother Helbing reported Ryan, Wilcox and himself visited the mill owners. Bid arrived at in San Francisco that there will not be any exempt list. Expecting a communication from the Secretary of the Cabinet Association and Secretary of the Mill Owners. This side of the Bay agreed to go along.'

"Meeting of September 26, 1939:

"Was asked by Brother Edwards about the material on the Bond Clothing Store. Brother Cole reported it came from the East, and Brother Urge stated the same. Brother Lyttle stated the Royal Showease Co's address was stamped on the backs

of the wall paneling. If this is true and this material was made in the East the Royal people can be brought before the Conference Committee.'

"Meeting of November 14, 1939:

"'Beronio Lumber Company has order for 265,000 feet of [342] T. and G. for the Cow Palace. Told all parties concerned this material will have to be *runned* in S. F. Brother Kelly stated Symon Bros. wreckers received two carloads of trim. Brother Byrnes stated carloads of siding is coming in all over town.'

"Meeting of November 21, 1939:

"'B. A. Helbing report trying to hold the 260,000 feet of 2 by 6 T. & G. for the Cow Palace. Have been contacting Sacramento in regard to this work.'

"Meeting of November 28, 1939:

"'Carload of millwork for Smith in Daly City and Nelson on Ocean Avenue without the label. Smith agreed to go along. Buckley received about 15,000 feet of molding from a plant in San Jose without the label. Told to send this stock back or have it *re-runned*. Local No. 262 was notified and placed a picket on this shop. Symon Bros. Wreckers received two carloads of unfair material. Asked these people to go along with the program and refused. Recommends that Symon's be placed on the unfair list.'

"Meeting of December 12, 1939:

"'Brother Westby reported Symon Bros. were notified to appear before this Board to show cause

why they should not be placed on the Unfair List. Symons agreed to use local millwork and go along with the program. Brother Helbing also spoke on this case and stated Symons will ask for local bids.

“Meeting of December 19, 1939:

“B. A. Helbing reported Brother Westby doing picket duty and found two consignments one firm will have his share re-run. The firm on Bay Shore also agreed to go along and have their share re-run, after convincing these people to what the outcome would be.

“Then there is a meeting of January 9, 1940:

“B. A. Helbing reported the T. and G. for the Cow Palace is coming from an unfair firm.” [343]

“The meeting of January 16, 1940:

“The 250,000 feet of T. and G. for the Cow Palace coming from the North without the label. The lowest bidder will have to be recognized. Will have to show some kind of a protest against this material. If a picket is placed on this job, we may be interfering with the Interstate Commerce Law. Brothers Wilcox, Miller and Byrne spoke on the matter. Brother Byrne stated the picket should be placed in front of the building if there is going to be a picket. Brother D. J. Edwards stated we will be bucking the counties of S.F., San Mateo, the State and the Federal Government.”

“Meeting of January 23, 1940:

“B. A. Helbing had a phone call from the Secretary of the Mill Association in regard to the T.

and G. flooring going in on a warehouse on Third Street for the Safeway Stores. Cahill has the job and agreed to go along. Out looking for material coming into S.F. without the label. Some four sided stock coming in. Routine. Brother Kelly stated there is no exempt list and the mills are breaking down conditions by bringing in this material with the label that is being manufactured under a lower wage scale. The Conference Committee should tell the employer at the coming meetings that they are the one who is guilty of breaking down conditions by having this cheap labeled material shipped into this area.

"Meeting of January 30, 1940:

"The matter in regard to the Federal investigation was discussed. Brothers Seagrave, Wesley and Helbing spoke on the matter. All stated we should have our legal advice ready if needed."

"I want to ask counsel if 'M. and S.' means 'Moved and Seconded.'"

"Mr. Routzohn: Yes."

"Mr. Zirpoli: 'Moved and seconded that business Agent [344] Helbing hire legal advice if necessary. Carried. Brother Kelly stated the general office district C of C., as well as Local No. 42 are involved if there is a case of indictment.'"

"Now, the meeting of June 25, 1940:

"Davis Hardwood shipped a load of material to San Mateo without the label. The load was sent back and all material came from the North. Routine.'"

C. E. McCONNELL

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am connected with E. K. Wood—a local lumber firm—and have been about a year and a half. Prior to that, I was connected with Retail Lumber Association, East Bay, in the neighborhood of a year and a half. Prior to that, Wood Products, Inc., in Oakland. I was connected with that association prior to the time it was incorporated. It was named East Bay Mill Owners' Association. It ceased to be known as East Bay and became Wood Products, Inc. in 1937, approximately. I was secretary of East Bay Mill Owners' Association. I recall negotiations in 1936 relating to execution of an employer-employee contract between the Planing Mill Owners and the Union Millmen. D. N. Edwards represented East Bay Mill Owners Association—members, practically 100 per cent, were represented by Edwards, including Boorman Lumber Company, Tilden Lumber Company and Hogan Lumber Company. Gordon Pierce represented Boorman Lumber Company at meetings of the association. C. R. Buchanan represented Hogan; also Mr. Hogan. Hill Lumber & Hardware Company was not a member, in my opinion, nor E. K. Wood Lumber Company. I believe Eureka Lumber Company was—that is questionable. Zenith Mill & Lumber Company was a member, repre-

(Testimony of C. E. McConnell.)

sented by C. I. Spears at meetings; also [345] Nels Nelson, of Hayward Mill & Lumber Company. My understanding is, the various individuals named as representing the companies, appointed Mr. Edwards to negotiate the contract referred to.

Exhibit 156 is the agreement signed for the members of the East Bay Mill Owners' Association, in September, 1936. Mr. Edwards' signature appears on it.

G. L. JIMERSON

being called as a witness on behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

I am sales manager for Algoma Lumber Company located at Algoma, Oregon. Its business is logging, sawmill and manufacture of millwork, lumber and shooks. I have been with the company 16 years, — sales manager for 9 years. I was sales manager during 1938 and 1939. The company engages in the business of millwork and has engaged in the sale of lumber and millwork and pattern work in the San Francisco Bay area. We have not been so engaged since 1939. Prior to 1939, Pyramid Lumber Company of Oakland and Jimerson-Green of Oakland and San Francisco were our chief customers. In 1936, we had two cars of lumber going to H. Lincoln & Sons that

(Testimony of G. L. Jimerson.)

were declared hot cargo, and we laid off, and then in 1939 we tried it again and had another car declared hot cargo, and since then we have laid off altogether. Knotty pine paneling was in the car. It is lumber that is used and milled to be worked for paneling in rumpus rooms. It is used quite extensively in taverns. We do not particularly specialize in that. We did help promote it, because it was used in the lower grades of lumber for which there was no market at that time. I am familiar with the price our competitors sold lumber for in the San Francisco Bay area, and with the price of such lumber in 1938 and 1939 we were selling to Pyramid. I am familiar with the price here in San Francisco in [346] 1938, approximately. It is my business to find out what the prices are in competitive markets, because we have a competitive product. I mean by "approximately," I don't know the exact amount of money. I could not say I knew definitely what the market price was in 1938 and 1939 in San Francisco. Rough lumber in San Francisco from Algoma would cost you 25 cents a thousand more than lumber run and knotty pine panels in 1938. Knotty pine panels is patterned lumber.

Cross-Examination

By Mr. Routzohn:

The shipments that were refused were all sent to H. Lincoln & Sons, located in Oakland and Berkeley. The second carload in 1939, marked "hot cargo" went to the same people. That material was not

(Testimony of G. L. Jimerson.)

marked with the union label of the United Brotherhood. At that time our mill was not organized. We have two unions now, the A. F. of L. and C.I.O. It was non-union lumber that we shipped at that time.

Thereupon, the constitution and by-laws of the Building Trades Council was introduced in evidence as U. S. Exhibit 66.

"Mr. Howland: At this time I offer only article 3 of this document marked Exhibit 66, which is the constitution and by-laws of the Building Trades Council of San Francisco, adopted June 24, 1937.

"Mr. Tobriner: It has been stipulated, has it not, that we may read in any other portion of that exhibit if we so desire?

"The Court: Yes, that is understood.

"Mr. Faulkner: There is a little confusion in the record, first he offers a book and now he only offers a part.

"Mr. Howland: I offer a part.

"The Court: The entire book is not being offered, just portions of it? [347]

"Mr. Howland: Just Article 3.

"The Court: Article 3 is being offered by the Government, and it is understood that any defendant may read any portion of that if they wish, or offer it in evidence.

"Mr. Faulkner: May we have it understood that only the parts read are deemed in evidence?

"The Court: Let that be the understanding.

"Mr. Howland: Article 3 of this constitution and by-laws reads as follows:

“Section 1. Should a craft affiliated with the Council have a grievance with an employer or employers, it shall use every honorable means towards a satisfactory adjustment of the same; and failure to do so, it may, at a regular or special meeting of the Union or Unions in the craft, refer in writing, under the seal of the Union or the Unions, the difficulty in question to the Council for investigation and action.

“Section 2. No Union shall be eligible or entitled to assistance from the Council, in case of any demands, strikes or lockouts, until it has been approved by at least a two-thirds vote of the members present at a regular session of the Council.

“Section 3. No Union or Unions affiliating with the Council shall be allowed to declare any building, shop or firm unfair until all provisions of Section 1 and Section 2 of this article have been fully complied with, and then only after such declaration has been formally made and approved in regular sessions by the Council.”

Thereupon, the pamphlet marked “Official Minutes, San Francisco Building & Construction Trades Council No. 3,” was introduced in evidence.

“Mr. Howland: I desire to offer in evidence the official minutes of the San Francisco Building & Construction Trades Council designated No. 16, of this entire exhibit marked for [348] Identification 107. I am reading that part which read as follows, and I am reading the first four paragraphs consecutively:

“The Building and Construction Trades Council of San Francisco met in regular session pursuant to adjournment in Brotherhood Hall, Building Trades Council, Thursday evening, November 30, 1939. The meeting was called to order by President Alexander Watchman at 8:00 o'clock. The roll of officers was called and the minutes of the previous meeting, November 16, 1939, were approved as printed.

“Business Representatives James E. Ricketts and John H. Smith rendered their weekly reports, which were received and approved.

“Communications. From the Bay Counties District Council of Carpenters stating that upon request of Millmen's Local No. 42 that the District Council of Carpenters declared its intention to place the Symon Bros. Wrecking Company on their 'We Don't Patronize' list and refer the matter to the Council, that unless their dispute was amicably settled that similar action be taken. Received and referred to the Executive Board.

“(The document was received in evidence and marked 'U. S. Exhibit 107.')

“Mr. Howland: I offer from the minutes of the same Council, contained in Exhibit 106 For Identification, which I now offer in evidence—Official Minutes of the San Francisco Building & Construction Trades Council No. 46.

“(The document was received in evidence and marked 'U. S. Exhibit 106.')

"These minutes are the minutes of the meeting of Thursday evening, July 28, 1938. I will read at this time but one paragraph from the first page entitled 'Credentials and Communications.'

"'From Millmen's Union No. 42, agreement with Lumber [349] Products Association and Cabinet Manufacturers' Institute of California, Inc., Northern Division. Motion agreement be approved by the Council. Carried.'"

Thereupon, Exhibit 31 for identification, being constitution and laws of the United Brotherhood of Carpenters and Joiners of America, was introduced in evidence as U. S. Exhibit 31.

"This Constitution and Laws which I have referred to says on its face, 'In effect April 1, 1929,' and at page 11 of this printed booklet under the heading 'First General Vice-President' at paragraph B the following appears:

"'His duties shall be to devote all of his time to the United Brotherhood, with headquarters at the general office. He shall have power to examine, approve or disapprove all local union, District Council, State Council or Provincial Council laws. He shall have charge and issue the label and keep a record of same in accordance with the constitution and laws of the United Brotherhood.'

"At page 57 of this same booklet under a sub-heading entitled 'Label,' the following appears:

"'K. Upon request of the First General Vice-President, an organizer shall be sent to investigate

the conditions of any mills using the label, and upon receipt of report the General President shall furnish a copy of same to the First General Vice-President.

“ ‘L. In case of any violation of agreement or grievance against an employer, the label shall be withdrawn when ordered by the First General Vice-President.

“ ‘M. The First General Vice-President, with the sanction of the General Executive Board, shall have the power to order the withdrawal of the label from any factory, shop or mill, upon charges duly made, and shall have power to regulate and investigate the issuance of the label in accordance with the constitution and laws of the United Brotherhood.’ ” [350]

Thereupon, folder identified as Exhibit 34-4 was introduced in evidence as U. S. Exhibit No. 34, with the understanding that such portions as desired could be read at any time.

“Mr. Howland: Yes, I would like to read a short excerpt from the fourth paper that this file contains, which is a carbon copy dated November 2, 1936. It is addressed to

“ ‘Mr. W. C. O’Leary, F. S. & B. A.,
Local Union No. 550,
540 60th St.
Oakland, Calif.

“ ‘Dear Sir and Brother:—

“ ‘Yours of October 29th enclosing applications

for the use of our label upon the products of the following concerns:

- Elcerito Lumber Co., Elcerito, Calif.
- Eureka Mill & Lumber Co., Oakland, Calif.
- Hayward Mill & Lbr. Co., Hayward, Calif.
- Loop Lbr. & Mill Co., Alameda, Calif.
- E. K. Wood Lbr. Co., Oakland, Calif.

has been received, together with copies of agreements entered into with these firms. These applications are quite satisfactory, and the labels have been ordered made up.'

"Skipping the remainder of the letter,

" 'Yours fraternally

and a space,

" 'FIRST GENERAL VICE
PRESIDENT.' "

Thereupon, by-laws and trade rules of Bay Counties District Council of Carpenters and Joiners of America, Exhibit No. 2 for identification, was introduced as U. S. Exhibit No. 2.

"Mr. Howland: This booklet states on its face, 'By-Laws and Trade Rules Bay Counties District Council of Carpenters and Joiners of America, San Francisco and Vicinity, With Jurisdiction in San Francisco, San Mateo, Marin and Alameda Counties. Adopted February 22, 1939, Approved by First General Vice-President, M. A. Hutcheson, May 26, 1939, In Effect May 26, 1939.'

I am reading from page 29 of this booklet under a chapter entitled "Millmen," and sub-heading en-

titled "Extract of Agreement Made With Mill Owners." [351]

"Such material as specified in agreement with employer does not need to bear a stamp, it being stock material; if, however, it is manufactured in this city, it must be stamped. It is agreed that every piece of material milled must be stamped immediately after being sent through the machine, before it is stowed away or used.

"Article II. Section 1. It is agreed by the District Council that, in conformity with the agreement between the mill owners and millmen, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing Trade Rules, or are paying less than the wage scale hereinbefore quoted, or employing other than Union mechanics.

"Sec. 3. These conditions shall apply not only to mills within the City and County of San Francisco, but to all mills in the State of California, as well as those of all other States."

Thereupon, the following portions of the minutes of Bay Counties District Council of Carpenters, exhibits for identification 109 to 113, inclusive, were introduced by reading to the jury:

"From the minutes of the Bay Counties District Council of Carpenters of the meeting of September 2, 1936, under the heading of Communications:

"From Millmen's Union No. 550, reporting on

the results of the vote taken by Locals 42 and 550 on the proposed settlement between Locals 550 and 42 and the Planing Mill owners and cabinet manufacturers in this district. The proposed agreement was read and it was moved and seconded that the District Council approve the agreement.'

"From the minutes of the District Council of Carpenters of September 16, 1936, under the heading Communications: [352]

"From Local 42, giving the result of their vote on the proposal of wages and hours and submitted to the District Council by the employers in the shops and mills. Filed for reference.'

"Minutes of the meeting of September 23, 1936, under the heading of Communications:

"From Local 550, notifying the Council that it had voted, 117 for and 16 opposed, in favor of the agreement with the Mill Owners and Cabinet Manufacturers. Noted and filed.'

"From the minutes of the same meeting under the heading of Reports, the following:

"Business agent Edwards reported that he had been out with the secretary of the Cabinet Manufacturers Association checking up the shops and mills to determine when the new scale should go into effect. Now being paid in a large number of the plants.'

"From the same minutes under the heading Unfinished Business:

"The secretary read the agreement between the

District Council Millmen's Union Nos. 42 and 550, and the Lumber Products Association, Cabinet Manufacturers Institute and East Bay Mill Owners Association. The agreement, which becomes effective retroactive to June 27, 1936, and continues in force until June 15, 1938, a period of two years, provides for \$1 per day increase in the scale until March 15, 1937, and \$8 per day from then on. Union conditions of employment are stipulated.

"From the minutes of the same organization dated February 3, 1937, under the heading New Business:

"Members are requested to look for the union stamp on mill and cabinet work and report to the business agent or secretary those jobs where unfair material is being used."

"The minutes of the meeting of February 10, 1937, under the heading Reports:

"Business Agent Edwards reported on the Buckley Sash [353] and Door Company, operating under non-union conditions and bringing practically all of their materials in from the North. It was moved and seconded that the District Council of Carpenters place the Buckley Sash and Door Company on the unfair list. The motion was adopted by unanimous vote."

"From the minutes of the same organization, February 2, 1938 under the heading Communications:

"From Millmen's Union 550, protesting the im-

portation of special run matched end T & G into this district, which should be run here by a local mill. Referred to Unfinished Business.'

"From the same minutes under the heading Unfinished Business, the following:

"The letter from 550 in relation to the importation of matched T & G was read, and it was moved and carried that in so far as the P. J. Walker Company's job for the Illinois-Owens Glass Co. was concerned, that the business agents and officers of the Council be authorized to deal with that particular job.'

"From the minutes of the same organization for the meeting of December 21, 1938, under the heading Communications, the following:

"From Local Union 42, bringing to the attention of the District Council the fact that shops and mills in outlying districts as far east as the State of Michigan are bidding on public work and private work in the City and County of San Francisco, and requesting the cooperation of the officers, business agents and delegates of the District Council to cooperate with their union in keeping this work out of our district. The officers and delegates were earnestly requested to give the millmen their full cooperation in this matter.'

"From the minutes of the same organization for the meeting of January 4, 1939, under the heading Reports, the following:

“The Council was notified that Brother Chas. Helbing, [354] formerly business agent of Local Union 42, had been elected as an additional business agent for Local No. 42 and by motion, Brother Helbing's election was approved by the Council.”

“From the minutes of the same organization for the meeting of November 29, 1939, under the heading of Communications:

“From Millmen's Local 42, requesting the Council to place the Symon Bros. Wrecking Company, 1435 Market Street, on our ‘We do not patronize’ list,—endorsed by the Council and referred to the San Francisco Building Trades Council for action.”

HARRY H. HILP

called as a witness for plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am a building contractor and have been in that business almost 30 years. We did work at Treasure Island and purchased tongue and groove for use there in June, 1938. We purchased that from Daugherty Lumber Company, located in San Francisco. The flooring was inch and a half tongue and groove flooring that could be classed as millwork. I believe it comes from northern California and southern Ore-

(Testimony of Harry H. Hilp.)

gon. They purchased it from mills and sold it to us. I don't recall the names of the mills. It was delivered in box cars at Treasure Island. It was not immediately unloaded when it was delivered. I telephoned Dave Ryan and told him that the agreement of non-stoppage of work was being violated on Treasure Island, that we had some flooring to unload and that the lumber handlers would not handle it. Mr. Ryan said that the flooring was over the size that was permissible to be brought in from the north and that the lumber handlers had instructions not to unload it. He said it was unfortunate that the matter had come up; that the millowners had an agreement with the millworkers union that flooring over a certain size would have to be milled in the Bay area or in [355] San Francisco or Oakland. Mr. Ryan was very cooperative and we had a meeting. We explained that we had purchased this material without any thought of any violation and that we had a time penalty, and that the upshot of it was that the lumber handlers were instructed to unload the material and the work proceeded. We discussed that agreement under which there was to be no stoppage of work and any disputes were to be taken up and settled—I forget whether by arbitration, or in some manner so the work could not be stopped. There was such an agreement with respect to the work at Treasure Island. It applied only to work at Treasure Island.

I am a director in Associated General Contractors. I was president in 1938. I don't believe I have

(Testimony of Harry H. Hilp.)

seen paragraph 2 of Government's Exhibit 132 before. I saw the arbitration agreement and saw a clause 8 in there that more or less coincides with that. That is not what I saw. The agreement I saw was not an agreement, it was an award—a decision of the arbitrator setting up certain increases in salary and certain conditions. I don't think I have seen the part of the contract that begins "Maintenance of fair labor conditions." I saw exhibit for identification No. 70, which is the arbitration award. I have seen section 8 of that.

Thereupon, the first three pages of exhibit 70 for identification was introduced in evidence as U. S. Exhibit No. 70, and the following paragraph therefrom was read to the jury:

"Mr. Burdell: 'Maintenance of Fair Labor Conditions.

" 'It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interests of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions [356] of said agreement.' "

On the 20th or 21st of July, a letter came to me from the Building Trades Employers Association advising of the award and telling us of this particu-

(Testimony of Harry H. Hilp.)

lar clause. I saw a copy,—I do not think I had a copy. I called a meeting of the Industrial Relations Committee of the Associated General Contractors. The Industrial Relations Committee deals with labor relations of the contractors with their employees. I was chairman of the Industrial Relations Committee. About a day or so after we received this letter, a meeting was called, and Mr. Edwards, manager, I think, of the Planing Mill Owners in Oakland, talked to the committee and presented his views as to the reason why this arbitration board was wrong, with special reference to section 8. Two days later, I called another meeting because the San Francisco millmen and the union representatives and some of the contractors wanted to discuss further this arbitration award. I believe Jack Hart, Mr. Ennes, Mr. Edwards, Dave Ryan, Aaronson and one or two other gentlemen from the Building Trades were present and the representatives of Industrial Relations Committee. I presided over the meeting at the Sharon Building. According to the notes that I looked over this morning—the memorandum of the meeting—it was opened with the general contractors' dissatisfaction with the award, with particular reference to clause 8. The other part of the award was satisfactory. Everybody participated giving their views of why the award should stand, and the Oakland Planing Mills objected strenuously to the award, saying they were not a party to it; that they sat in at the meeting but had not voted. They wanted to have

(Testimony of Harry H. Hilp.)

a differential in their favor. The contractors' stand was that it was detrimental to millwork prices in San Francisco to not have outside competition, but the final result was that the General Contractors Association decided unanimously to abide by the decision of the arbitrator, notwithstanding the fact they [357] thought that clause 8 was wrong. Mr. Hart said the arbitration has been made and should go through on that basis—I think Mr. Ennes said the same thing. It is hard to remember if Mr. Hart or Mr. Ennes said anything about protection—I think somebody mentioned that—it might have been Mr. Ennes—that this award would give the San Francisco cabinet makers and millmen protection so that they would be on an equal footing with outsiders that came to the city to work. I do not believe we had further meetings about the thing.

Cross-Examination

By Mr. Routzohn:

We were general contractors for the Golden Gate International Exposition, and the job I had reference to was the Court of Pacifica, that is the part in which they had the Cavalcade. We were not general contractor for the entire Exposition—we were the general contractor for that portion of the buildings. We had quite a few other buildings on the Fairgrounds in addition to that. We *did* of the work that was done there possibly 15 or 20 per cent. It was tongue and groove flooring—an inch

(Testimony of Harry H. Hilp.)

and a half flooring, I believe; I am not sure. I know it came from the north somewhere. I don't think that it bore the label. I don't remember whether it did. I remember there was a discussion that the mills that had turned out some of this lumber, or maybe all of it, were union mills. I don't recall whether it had the label. I believe it was the lumber handlers that refused to handle the shipment. I do not believe the lumber handlers belong to the United Brotherhood of Carpenters and Joiners of America.

"Q. They are affiliated with what national organization, Mr. Hilp?"

"Mr. Burdell: Just a moment. That is not proper cross-examination.

"The Court: Sustained.

"Mr. Rutzehn: So I can get it in the record, didn't [358] the lumber handlers who refused to handle this lumber belong to the Hod Carriers Association?"

"Mr. Burdell: I object to that as not proper cross examination.

"The Court: Sustained."

As soon as I found out about that refusal of the lumber handlers to unload, I got in touch with Mr. Ryan and Mr. Ricketts. It was not immediately released—I believe it was about a day. It is three years ago and very hard to remember whether I got in touch with Mr. Ryan after Mr. Ricketts. I eventually reached Mr. Ryan. We had no trouble

(Testimony of Harry H. Hilp.)

after that at all, at any time. That is the only instance during the time we were constructing these buildings over there we had any difficulty whatsoever with the union.

Cross-Examination

By Mr. Faulkner:

At the meeting in the Sharon Building there was a discussion about the arbitration award of Judge Johnson. I was a delegate to Building Trades Employers Association. I have a distinct recollection that Mr. Ennes was at the meeting. I said that Mr. Edwards, of Oakland, and Mr. Hart were there, too. I just looked over the notes of the meeting and I know. I haven't the notes, but the secretary of the Association has them. Those who were present are indicated in my notes. I have no objection that counsel for the defendants see these notes. I think it would show in those notes that Mr. Hart made some remark about the arbitration award.

Redirect Examination

By Mr. Burdell:

When I talked to Mr. Ryan about the T&G at the Fairgrounds, there was no mention whatsoever of whether the material had a label on it. [359]

Exhibit for identification No. 18,—minutes of Millmen's Union Local No. 550, were introduced in evidence as U. S. Exhibit No. 18.

"Mr. Burdell: Reading from the minutes of August 27, 1936:

“The Chair then went into the Special Order of business and asked for a reading of the proposition submitted by the mill owners. The Chair then called on Brothers Ovenberg and O’Leary who gave a résumé of the conferences with mill owners. The Chair then asked for a general discussion on the proposition. Brothers Helbing and Kelley of 42—Brothers Irish—Eichwald—Sholden—Cicinato—O’Hare and others spoke, resulting in a motion being made and seconded that Local Union 550 proceed to vote by secret ballot on the proposition submitted by the mill owners. Brother Eichwald was appointed judge and Brothers Cicinato and Sholden tellers. The result of the vote was 274 Yes—37 No—and 1 blank.”

“Reading from the minutes of May 13, 1937:

“‘Brother O’Leary spoke for the Conference Committee saying the imported non-union trim on hand to be used but no more to be brought in and asked all members to be on the watch for violations and report any to 550 immediately.’

“Reading from the minutes of July 1, 1937:

“‘Following elected officers were installed: President M. D. Cicinato * * * Treasurer E. H. Ovenberg * * * Delegates to District Council J. P. Sholden, E. H. Ovenberg, W. C. O’Leary, C. H. Irish * * * Business Agent O’Leary rendered his weekly report stated he had placed a picket on some hot cargo said to be for Kliers.’

“Reading from the minutes of October 14, 1937:

“ ‘President M. D. Cicinato presiding. * * * Brother George Wilson called attention to the many doors coming here contrary to our agreement a very regretful condition.’ [360]

“ ‘Reading from the minutes of January 27, 1938:

“ ‘M. D. Cicinato presiding. * * * Business Agent O’Leary told of matched end T&G 2x6 coming in from the North in violation of our agreement. * * * New business by Brother O’Hare motion passed the secretary notify the District Council and Building Trades Council that we are opposed to the importation of matched end T&G and ask their help to stop contractors from buying or using same which is a direct violation of our agreement.’

“ ‘Reading from the minutes of February 17, 1938:

“ ‘Brother Irish gave a lengthy on the District Council saying the Council had ruled to allow matched end T&G to come into the district over our protest. Brother Ovenberg told of the Conference Committee meeting with mill owners from both sides of the Bay. They also discussed matched end T&G and were agreed that it should not come in however the decision of the District Council must prevail.’

“ ‘Reading from the minutes of April 7, 1938:

“ ‘M. D. Cicinato presiding. * * * New business by motion the secretary is instructed to write to the District Council asking said Council to endeavor to have included in future agreements for the carpenters the enforcement of the union label on all mill and cabinet work and also that local made mill and cabinet work be demanded.’

"Mr. Burdell: If the Court please, I now desire to introduce in evidence Government's Exhibit for identification 21 and read from the minutes of Millmen's Union Local No. 550.

"Mr. Faulkner: Same objection, your Honor, made to the last, and upon the further ground that these also refer to acts and conduct of the unions in connection with a business or enterprise with which the employer defendants are not parts of or parties to.

"The Court: Overruled. [361]

"(The minutes were marked 'U. S. Exhibit No. 21.')

"Mr. Burdell: Reading from the minutes of August 19, 1938:

"J. P. Sholden presiding. * * * Business Agent O'Leary reported that there was some knotty white pine hot stuff at Mr. Friedman's yard and recommended that the same be rerun here and stamped with the understanding that Mr. Friedman would abide by our agreement in the future. A Motion was made concurring in the recommendation motion amended that the matter be referred to our Conference Committee amendment carried."

"Mr. Burdell: I think I made some omissions in that, and with the Court's permission, I will read it over.

"The Court: Reread it.

"Mr. Burdell: 'Business Agent O'Leary reported the wife of Brother Jack Washburn had died and

also that there was some knotty white pine hot stuff at Mr. Friedman's yard and recommended that the same be rerun here and stamped with the understanding that Mr. Friedman would abide by our agreement in the future. A Motion was made concurring in the recommendation motion amended that the matter be referred to our Conference Committee amendment carried.'

"Minutes from the meeting of October 7, 1938:

"'Brother Irish, Chairman of the Observers Committee, says he needs more men with cars to follow trucks.'

"Reading from the minutes of November 11, 1938:

"'Brother Cambiano called a joint meeting with the employers Wednesday evening November 19 in SF. Brother Ryan representing Marin County the new agreement was discussed generally and organizer Cambiano will call another meeting soon. Mr. D. N. Edwards representing the Wood Products signed the new agreement November 10, 1938.'

"Reading from the minutes of January 13, 1939: [362]

"'J. P. Sholden presiding. * * * Our business agent O'Leary reported checking over the sidings and freight sheds and mills during the week and not finding any hot millwork by motion accepted. Brother Ovenberg reported for the Conference Committee.

"Reading from the minutes of January 20, 1939:

"'J. P. Sholden presiding: * * * Business Agent

O'Leary reported he was still checking all shops, mills and sidings for unfair millwork report accepted. * * * President Sholden reported on a meeting of the Conference Committee and mill owners held January 18 for the purpose of discussing a new agreement starting May 1, 1939.'

"Reading from the minutes of April 28, 1939:.

"J. P. Sholden presiding. * * * Conference Committee Brothers O'Leary, Ovenberg, Irish and Sholden reported on the activities of the committee with discussions on exempt materials.'

"Minutes of January 19, 1940:

"C. H. Irish presiding. * * * Recommended that a special business agent be placed in the field for the purpose of gathering data for our Negotiating Committee and also to advertise the use of local made union millwork a motion was passed to engage Brother Chas. Roe at a salary of \$10 per day.'"

WILLIAM E. HAGUE

called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

I am secretary of the Central California Chapter of the Associated General Contractors of America, and have been since 1932-1933. My duties are to attend to all affairs of the Chapter, labor matters,

(Testimony of William E. Hague.)

and promoting increase construction. I act as secretary of the Industrial Relations Committee of the Chapter, and acted as secretary of the meetings of the Conference Committee of the Unions and the Contractors and the millmen, in 1938. I did not [363] take regular minutes, as a rule, I wrote down rough minutes, rough notes. Sometimes they were typed and sometimes written in pencil. These notes were written at the time of the meeting. Letters to be written with reference to the meeting or the conference, would be written after the meeting—in most cases the same day.

Documents produced by the witness were marked U. S. Exhibit No. 163 for identification,—long-hand notes or rough notes of an Industrial Relations Committee meeting made by me. Mr. Hilp and Mr. Tait and Mr. Edwards were present.

“Mr. Faulkner: The Industrial Relations Committee are not parties to this case; we object to what happened at the Industrial Relations Committee, there is no foundation laid that that was a meeting pursuant to or in furtherance of the charge in the conspiracy, and it is hearsay as to the defendants who were not present at the meeting.

“The Court: Overruled; proceed, please.”

Mr. Edwards, according to these notes and according to my memory of the meeting, the Committee wanted to find out what was the attitude of the East Bay Planing Mills on the arbitration award,

(Testimony of William E. Hague.)

and the East Bay was not going along on it, and Edwards was asked to explain why and as I recall he said they were not parties to the arbitration and explained the position of the East Bay millowners with respect to the mills in San Francisco, and that was what the Committee was after, they did not want to have one situation in San Francisco and another situation in East Bay. They wanted to find out what was the trouble in the East Bay that they could not go along. Edwards explained at length. These notes do not cover Mr. Edwards' explanation. Mr. Edwards explained that the position of the East Bay was different to the San Francisco mills, because he claimed the large mills in the East Bay shipped their products all over Northern California and also that they were in competition with mills that were clearly outside of the immediate Bay area. They were large mills—I [364] forget the name, but there were two or three he mentioned not in Alameda County who were absolutely competitive with Alameda County, and that Alameda County must be in a position where it could meet that competition to successfully keep their mills going. To the best of my recollection he thought Article VIII a very bad clause, that they would make a lot of trouble.

I think there was an agreement of some kind signed after the arbitration between the mills and unions in San Francisco, but I don't think I ever saw that agreement. I don't think there was an agreement in Oakland at the time.


(Testimony of William E. Hague.)

Mr. Ryan was anxious to see the arbitration decision upheld in both San Francisco and Alameda County. Just exactly what steps he took to enforce it in Alameda County, I do not recall.

Mr. Edwards' association is located in Oakland. I recall another meeting according to the notes, Monday, July 25, 1938. There were present Mr. Hilp, Chairman of the Board, Mr. Cato, Mr. S. G. Johnson, of Oakland, and W. C. Tait, of San Francisco; representing the planing mill owners and cabinet men, Mr. Edwards, Mr. Hart and Mr. Ennes; and representing the carpenters, Mr. Ryan, Mr. Risley and Mr. Aronson and Mr. Symons. Mr. Ryan represented Bay Counties District, Mr. Risley is business agent in Alameda County; Aronson is San Francisco business agent, and Symons from San Mateo. The meeting was called for the purpose of harmonizing, if possible, the decision that had been rendered by this arbitration board. Edwards was asked if he had been a party to the negotiations and stated he had been present but he refused to abide by the arbitration and was not an active party to it. Mr. Hilp made the statement, criticising Article VIII, which provided that no millwork could come in from the North unless it was produced at the same wages as was being paid at San Francisco. He thought it would work a hardship on business; that it would increase the cost of Millwork. I think he announced [365] as Chairman that the meeting had been called for the

(Testimony of William E. Hague.)

purpose of discussing the decision and seeing what could be done. The contractors were afraid that two wages might be set up,—one in the East Bay and one in San Francisco, and we would have trouble. Mr. Ryan said the proposal was for a two-year agreement; there was a clause for a sixty-day notice; wages and hours would come up at the end of the first year; and Edwards insisted that the East Bay was not a party to the negotiations. Edwards made the statement that the East Bay had never refused arbitration, but would prefer separate arbitration for Oakland, if necessary. He pointed out that the wage production point would govern the mills and not always cost at the job site. He said 80 per cent of the production of the East Bay mills went to outlying districts of Northern California. Some of them were doing 75 per cent out of Alameda County. Another mill he mentioned was doing half of its business outside of Alameda County, and they were in competition with local mills, not parties to the arbitration, and he would continue to pay a lower wage. Mr. Ryan said they had done the best they could to settle the question by arbitration and they thought it should apply to the four counties in the Bay Area—San Mateo, San Francisco, Alameda and Marin. He stated it would not be practical to have one wage on one side of the Bay and another wage scale on the other side. He thought it would be better for the Bay G. C. Chapter to stay out of the contro-



(Testimony of William E. Hague.)

versy and allow the millmen to settle it among themselves. Mr. Edwards did not express any objection to the Chapter coming into the picture. Mr. Edwards said the San Francisco Planing Mills could find some way to protect themselves. They could afford to abide by the arbitration, but in the East Bay they could not. They must have outside business and be in a competitive position to get that work. They could not afford to pay the East Bay wages. He meant the competition they were facing—they were [366] selling all over the State—the big mills are across the Bay. He stated he had a solution but he did not know how to arrive at it unless the contractors agreed to pay the necessary price. He said that the millworks were not allowed to come in from the North—it would put up the cost of the millwork quite a considerable amount—I think he estimated the exact cost at about \$8 a thousand.

Mr. Ennes claimed that the conditions in Oakland did not differ materially from that in San Francisco, and said he favored arbitration. He also said, "We don't want to hit the street." According to the notes, Mr. Ennes said, "We believe the arbitration has been had and the wages must be lived up to." The meeting lasted probably two hours—maybe two and a half hours.

I kept in close touch with the situation, because the members of the Chapter were keenly interested and did not like the decision that had been ren-

(Testimony of William E. Hague.)

dered, and I made notes of the conference with Edwards and Ryan, and those notes kept the Committee informed of the developments that were going along. Mr. Ryan rang me up, or I rang him up several times, and Edwards rang me up and I rang him up quite a few times.

Carbon copy of letter of October 13, 1938, out of U. S. Exhibit 163 addressed to our Industrial Relation Committee in the Bay Area, was written by me. This letter was reporting to the Committee that it was proposed to keep out doors and a list of stuff quoted in the letter, quite an extensive list of the millwork which was not to come in. Mr. Edwards, I recall, told me that he was anxious that millwork should be allowed to come in. As I recall, Mr. Ryan was anxious to see the decision of the arbitration court upheld, and that no millwork be brought into San Francisco or the East Bay from the North. I think his idea was to sell me the thought we should not interfere in the matter—it was not our business. Mr. Edwards was in favor of letting in quite a number of things listed in one of those letters, doors, etc., and a lot of other stuff he thought should [367] be allowed to come in from the North. There was a difference of opinion between the two as to his view and Ryan's view. Mr. Edwards asked our cooperation, as I recall it. We didn't interfere in the case very much, as far as I know.

I wrote the letter dated November 10, 1938, out

(Testimony of William E. Hague.)

of U. S. Exhibit 163. I had the conversation reflected in the letter probably that day or the day before. I think I talked to both Ennes and Ryan and both of them wanted a provision that no millwork should come into San Francisco from anywhere which is produced at less than \$8.50 per day. Edwards wanted to get over a six-county agreement which would permit of bringing in certain millwork. Such an agreement was not arrived at at that time, because there was a difference of opinion between the two sides of the Bay.

I wrote the letter dated November 14, 1938, out of U. S. Exhibit 163. I had the conversation reflected in the letter probably the same day with Mr. Edwards. He said that the six-county agreement had now been signed to prohibit the introduction of doors and certain millwork, and stated at that time he found himself in a minority on the six-county setup, and now felt obliged to go along on it. He stated that the East Bay planing mill owners and lumber yards were not satisfied over the agreement, as it was definitely part of their business to bring in doors and certain other millwork from the North. He found himself in the minority and in the interest of harmony he felt that he should go along. The letter refreshes that conversation substantially. The last line in the letter, "—on both sides of the Bay because he found himself in a minority and wished to assuage the high feelings of Ennes, Ryan, et al., in San Francisco," is what he told me.

(Testimony of William E. Hague.)

Cross-Examination

By Mr. Tuttle:

I received the information where I say "I am reliably informed," in a letter by me to Mr. Hilp, dated November 11, 1938, [368] probably from Mr. Muir, Vice-President of the Brotherhood of Carpenters, a national organization. The information received from him and imparted in that letter to Mr. Hilp was that Hutcheson had told Ryan the carpenters couldn't refuse to handle millwork that bears the Brotherhood stamp of millmen unions in the East Bay. That is substantially what the information was from Mr. Muir. The Brotherhood couldn't afford to, could not afford to handle millwork if it had a Brotherhood stamp. It was the position of General President Hutcheson, in October, 1938, that Brotherhood men in the Bay Area would have to handle materials which bore the union stamp, no matter where they came from.

I think very probably it was Mr. Muir who gave me the information contained in the first sentence in the last paragraph of my letter of October 18, 1938, to Mr. Hilp. That information from Mr. Muir was that the Brotherhood would have to handle millwork that bore the union stamp. The last paragraph of that letter refreshes my recollection. Mr. Muir told me that clause 2 in that proposed agreement was objected to by the General President of the United Brotherhood. I couldn't tell you

(Testimony of William E. Hague.)

what Mr. Muir told me on that subject; it is several years ago. The paragraph in the letter states really what he stated.

Thereupon, the witness read the following paragraph from the letter:

"A. 'International Vice-President, Abe Muir, has instructed the S. F. Planing Mill Owners that they must eliminate Section 2 of their agreement which provides that no millwork shall be installed in S. F. which was produced at less than the scale being paid in S. F.'"

I am not sure whether it was Muir who gave me that information, or Edwards or Ryan—one of the three.

Cross-Examination

By Mr. Routzohn: [369]

Mimeographed letter from Exhibit 163 is addressed to all contractors, builders, architects and other employers of carpenters in the Counties of San Francisco, Alameda, San Mateo and Marin. The letter states the wages for cabinet workers and millmen employed in cabinet shops, planing mills and retail lumber yards in those four counties, is \$9 per day for an eight-hour day. The wage scale was established by an impartial arbitrator, Judge Walter Perry Johnson, selected by the Conference Board of the Building Trades Employers Association and Building Trades Council. The letter is from the Bay Counties District Council of Carpenters, by Mr. Ryan, secretary. I received that letter, and the following is a part of it:

(Testimony of William E. Hague.)

“We believe it is opportune at this time to say that the District Council of Carpenters has taken the lead in the building industry in promoting the principle of arbitration in industrial disputes, and have that stipulation incorporated in all our agreements. It will indeed be unfortunate if employers seek to nullify an agreement and a wage scale set up in the manner we have just referred to. We are confident you will agree with us that we will be justified in not installing millwork and cabinet-work made by employers in this district under a lower wage scale than the established \$9 scale.”

Cross-Examination

By Mr. Faulkner:

I recall the meeting in July of 1938. I knew, in July, an award had been made by the arbitrators concerning the wage scale to be paid to the millmen. I knew before that meeting was called, the East Bay group claimed they were not parties to that award and would not be bound by it. Our group—the general contractors—are purchasers of millwork from the various mills. When the meeting was called, the general contractors were confronted with the situation where the mills in San Francisco were paying a \$9.00 rate and the mills in the East Bay were [370] paying an \$8 rate. The general contractors recognized the situation was one that undoubtedly would lead to a strike—it was a threatening situation. They called a meeting

(Testimony of William E. Hague.)

first of all with Edwards of the East Bay to get his viewpoint. As I recall from the files there, one meeting was held July 20 and another July 23, and the second meeting was called for the purpose of seeing what could be done about it before a strike. General contractors were very much concerned with what should be done about it. The award of Judge Johnson had come down earlier in the month. The second meeting in July might have been at the invitation of both the General Contractors and the negotiating committee of Bay Counties District Council. It was presided over by Mr. Hilp of Barrett & Hilp, a general contractor. Mr. Cahill is a member of Cahill Bros., General Contractors. Mr. Johnson is a General Contractor in Oakland. Mr. Tait, in San Francisco. All members of the group of which I am secretary. Mr. Edwards and Mr. Jack Hart were not members of that group. I think Jack Hart represented the planing mill owners in San Francisco. Mr. Ennes represented the cabinet people; I don't think Mr. Ennes represented the planing mill owners or the mills. Mr. Edwards represented East Bay planing mill owners. They were not members, and were there by invitation.

Mr. Edwards, whose group was paying the \$8 a day wage to millmen, was objecting to the so-called paragraph 8 in the arbitration award. He recognized that under that paragraph he would be affected. I believe in the month of November, 1938,

(Testimony of William E. Hague.)

the situation was changed with respect to the rate of wage being paid to millmen in the East Bay and San Francisco. I believe between the period of July and November, 1938, an arrangement had been made, or was about to be made, whereby all millmen, whether employed in San Francisco or in the East Bay, were to receive \$8.50 per day. I do not recall clearly on that point. I do not recall the event. As I remember, the wage of \$9 was reduced to \$8.50. What was done in the East Bay I don't know, [371] but the wage in San Francisco was reduced from \$9 to \$8.50. I remember that. I have a clear recollection the award of \$9 was reduced between those bound by the award and the unions involved. I couldn't say I recall that date. I do not remember the relationship between the employers on the one hand and union members on the other, other than what is in the letter of November 10, 1938. The sentence in the letter used to refresh my recollection as to a statement made by Mr. Ennes is, "Ennes backed up Ryan in relation to a provision that no millwork shall come into San Francisco from anywhere which is produced at less than \$8.50 per day." I could not tell you who told me at the time—somebody. My memory is not refreshed by the letter whether that purports to be a definite conversation between Mr. Ennes and me.

I do not think it is quite correct that Mr. Edwards declared to our group that he participated in the negotiations, and after they were all con-

(Testimony of William E. Hague.)

cluded and an award was made, he declined to be bound by it. He did state that he had participated in negotiations but as I understood it he never signed up to agree to the award. His position in July, 1938, was that he would not be bound by the award. That was the reason for these activities by our group.

Thereupon, papers marked Exhibit 41-4 for identification were introduced in evidence and marked U. S. Exhibit 41-4.

"Mr. Howland: Q. Contained in this file is an original letter dated December 6, 1938, addressed to William L. Hutcheson, General President, United Brotherhood of Carpenters and Joiners, signed by the Bay Counties District Council of Carpenters, D. H. Ryan, Secretary, with certain attachments thereto. I will not read the entire communication at this time. It begins, however, as follows:

" 'Dear Sir and Brother: Enclosed herewith is a copy of the agreement entered into immediately following the award of [372] the Arbitration Board in the shops and mills, last July, and signed by the Cabinet Manufacturers, San Francisco Planing Mill Owners, and representatives of Locals No. 42 and 550 and the District Council of Carpenters."

. Attached thereto is a copy of the agreement referred to, and also another paper also dated December 6, addressed to Brother Hutcheson, by way

of running comments on the attachment, and this paper that I have designated as comments contains the following:

“The agreement to which this notation is attached is the agreement that was entered into and signed immediately following the announcement of the award of the Arbitration Board in July, 1938. This agreement we propose to change and modify as set forth below, and we are submitting it to you for your approval as ratified and changed before submitting it to the employers in the shops and mills within the Bay Counties District Council's jurisdiction for their approval.”

“Paragraph No. 2: The entire paragraph No. 2 is to be eliminated from the agreement.

“Paragraph No. 17: Change to read as follows: ‘In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or employers of members of the United Brotherhood of Carpenters and Joiners of America, signators hereto.’ No change in the exempted list.”

“Also contained in this same file is an original telegraph addressed to William L. Hutcheson, Carpenters' Building, Indianapolis, December 22, 1938, which reads as follows:

“On December 6th mailed copy of proposed to

agreement to cover shops and mills in this district. Stop Have received no reply or acknowledgment of its receipt at General Office Stop [373] Would like to know if it reached you and if it is satisfactory.

Dave Ryan.

“Attached thereto is a carbon copy of a telegram dated Indianapolis, Ind., December 22, 1938, addressed to Mr. D. H. Ryan, 200 Guerero Street, San Francisco, California, which reads as follows:

“‘Agreement and changes submitted received and meets with approval of this office. Forwarding letter to-day.’ Signed ‘M. L. Hutcheson, for the General President.’

“Also contained in the file is a carbon copy of a letter to Mr. Ryan from the First General Vice-President dated December 23, 1938, confirming that telegraph.”

Thereupon, the Court rules that no part of the exhibit be deemed in evidence except the parts read.

Thereupon, Exhibit No. 105 for identification was introduced in evidence as U. S. Exhibit 105 consisting of following letters produced from files of Alameda County Building and Construction Trades Council.

“Mr. Howland: The first of these letters is on the letterhead of Millmen’s Local Union No. 550, dated January 29, 1938, to the Alameda Building Trades Council, Mr. Charles Gurney.

“Dear Sir and Brother:

“Millmen's Union Local No. 550 protests the importation of special run matched end T and G, it is a direct violation of our agreement with the Mill Owners, it should be made here. We ask your assistance in this matter. Thanking you in advance, I remain,

Sincerely and Fraternally,

T. H. BENNETT,

Recording Secretary.

“The letter contains a pen-and-ink notation, ‘Concurred in.’

“The second letter also on the letterhead of Millmen's Local Union 550, is dated February 21, 1938, also addressed to [374] Alameda County Building Trades Council, Mr. Charles R. Gurney, Secretary.

“‘Dear Sir and Brother,’ and reads as follows:

“‘At a meeting of the executive officers of Local No. 550 called by our President, M. D. Cicinato and held Saturday, February 19-38 the undersigned was instructed to notify the Council as follows: Our protest against the importation of 2x6 matched end T&G has been referred to our General Office and until we hear from them it is our desire that the Council take no action in this matter.

Sincerely and Fraternally,

T. H. BENNETT,

Recording Secretary, Local 550.

This letter contains a pencil notation at the bottom, "Filed."

Thereupon, it was stipulated between plaintiff and the Union defendants that plaintiff's Exhibits 157 and 158 in evidence are the minutes of the business agents of the unions represented in the Alameda County Building and Construction Trades Council in the regular course of business, and should be deemed to be introduced with the same foundation as minutes of Unions 42 and 550, and subject to the same objections.

HUBERT C. MORRIS

called as a witness on behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I live in Portland, Oregon, and am engaged in the manufacture of millwork and sash and doors. I have been in that business over 30 years. I was connected with Central Door and Lumber Company in 1936, 1937 and 1938. Central Door and Plywood Corporation was successor to Central Door and Lumber Company, and succeeded in its business in 1938. In those years, I was sales manager for Central Door and Lumber Company and sales manager and [375] and president of Central Door and Plywood Company, handling all sales. I

(Testimony of Hubert C. Morris.)

had a representative in the San Francisco Bay Area, and visited San Francisco during those years. We sold millwork in the San Francisco Bay Area under my supervision. M. A. Peel was representative here. We made sales to Symon Bros. and Eureka Sash and Door Company during that period. We make sales to El Cerrito Lumber Company and H. Lincoln & Son in 1936, 1937 and 1938. We made sales to Davis Hardwood Company and Melrose Lumber & Supply Company. We did not make any sales to that company after 1940. M. A. Peel ceased to represent us about April 1, 1940.

NORTON R. SCHONFELD

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I am a special agent of the Federal Bureau of Investigation, qualified in accounting. I have examined certain payroll records of Mullen Manufacturing, L. & E. Emanuel, Inc., Fink & Schindler Company, Braas & Kuhn and Mangrum, Holbrook & Elkus, which have been identified as exhibits. I have a summary prepared of these exhibits which indicates in the various companies there were wage

(Testimony of Norton R. Schonfeld.)

changes on certain dates and the dates on which the changes were made, and the wages before and after the change.

Thereupon, such summary was introduced in evidence as U. S. Exhibit No. 164. Payroll changes were made in the payroll records of those companies for the week ending September 24, 1936, March 18, 1937 and October 20, 1938. Prior to September, 1936, an employee worked at \$6.40 a day; after that, and up until March, 1937, he worked at \$7.40 a day; and after March, [376] 1937, he worked at \$8 per day. In October, 1938, for the first day, at the rate of \$8, on the 14th, \$9, and \$8.50 for the 18th, 19th and 20th of the month. The records of all of the firms reflected the same wage changes, except that the first date recorded in those of Mangrum, Holbrook & Elkus is July 1, 1938.

Cross-Examination

By Mr. Faulkner:

I did not find in those payroll records during any of that period, a record of payment of the men at the rate of 82½c.

Thereupon, Mr. Tuttle read from Exhibit 41-4, being letter from Mr. Ryan to Mr. Hutcheson, dated December 6, 1938, additional portions not previously read, as follows:

"Now I am going on. There is an intervening paragraph which refers to a meeting that was held between the Local Union people and the local employers, and then Mr. Ryan goes on to say:

“At the meeting above referred to they, the San Francisco Employers, insisted that paragraph No. 2 of the old agreement should be written in the new agreement.”

I pause to say that I will show in a moment what paragraph 2 was.”

“Mr. Tuttle: Paragraph 2 in the agreement which Mr. Ryan says will have to be modified is as follows: .

“It is fitting that the wording of the Arbitration Board be here quoted and its purpose and intent be and is made a part of this agreement’— now quoting the Arbitration Board—‘Maintenance of fair labor conditions: It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interests of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of this agreement.’” [377]

“Now, then, Ladies and Gentlemen of the Jury, somebody in lead pencil in this enclosure that was sent by Mr. Ryan to Mr. Hutcheson, has written the word ‘out’ opposite that paragraph.

“The Court: That is paragraph 2?

“Mr. Tuttle: That is paragraph 2. We have the lead pencil word ‘out’ opposite that paragraph.

"The Court: Which you are now reading to the jury?

"Mr. Tuttle: Which I have just read to the jury. Going on with my reading of the letter, I will repeat one sentence that refers to that paragraph.

"The Court: Is there any testimony showing who wrote the word 'out'?

"Mr. Tuttle: No, but it is part of the enclosure that Mr. Ryan sent, so I assume that it was on the enclosure when he sent it, and I think it is a fair deduction it was put there by Mr. Ryan, in view of what he says in his letter:

"At the meeting above referred to, they, the San Francisco Employers, insisted that paragraph No. 2 of the old agreement should be written in the new agreement. I stated in reply that their agreement to modified paragraph No. 17 in the manner they did, nullified to a certain extent paragraph No. 2; further that when paragraph No. 2 was agreed to, practically all of the cabinet work and millwork used in this district was being made in the district, but that when Mr. Edwards started out to break down the award and the agreement, he wrote a letter to Local 550 quoting a telegram he sent to the General Office under date of August 5th as follows—This is Edwards' telegram to the General Office:

"Can millwork carrying Brotherhood of Carpenters' Label be discriminated against because of being made at a wage lower than called for in local

agreement. We know your policy but we want a positive answer to-day.' (Signed) 'Edwards.' [378]

"Then Mr. Ryan goes on: 'And reply'—this is a reply from the General Office quoted in Ryan's letter to Hutcheson:

" "Woodwork carrying Brotherhood Label should not be discriminated against. (Signed) Meadows, For General President.'—Mr. Meadows was the Second General Vice-President of the Brotherhood. Mr. Ryan in his letter to Hutcheson states as follows:

" 'I pointed out to the Employers that copies of this letter carrying this information were sent to homebuilders, contractors, architects, and others, broadly advertising the fact that that kind of mill-work could be brought in and would be installed, and that moreover, William Hague, Secretary of the Associated General Contractors, in his bulletins sent to all of his membership, drew their attention specifically to the fact that they could bring such material in, and that it had to be installed by Union carpenters. I stated to the representatives of the San Francisco Employers that not they, but other representatives of the Employers, in order to break down the principle of arbitration and the wage scale set up by arbitration, had gone out deliberately and brought about a condition making it not advisable at the present time to even attempt to enforce the provisions of paragraph No. 2; furthermore, that the General Office, in my

presence in a meeting in their office stated that woodwork bearing the label would have to be installed regardless of the scale paid in its manufacture.'"

Thereupon, there was introduced in evidence Exhibit No. 40-20 for identification as Defendants' Exhibit D, telegram from Edwards to Wm. Hutcheson, Carpenters' Building, Indianapolis, as follows:

" 'Muir not in San Francisco. Has not contacted us important meeting tonight. Want answer. Can millwork carrying Brotherhood Label be discriminated against by Brotherhood Carpenters because of being manufactured at a wage scale lower than [379] called for in local agreement. We know your policy but we want a positive answer to-day by wire.' Signed 'Wood Products, D. N. Edwards.' "

Thereupon, Exhibit 40-21 for identification was admitted in evidence as Defendant's Exhibit E:

" 'Mr. Tuttle: It reads as follows: 'August 4, 1938.

" 'D. N. Edwards,
Wood Products, Inc.
920 Ray Building
Oakland, California.

" 'Muir enroute to San Francisco. Millwork carrying Brotherhood Label should not be discriminated against.

" 'S. P. MEADOWS

" 'For the General President.' "

Thereupon, there was read from Exhibit 41-4 for identification memorandum from Mr. Ryan's letter, relating to paragraph 2:

"Mr. Tuttle: Under the heading of 'Paragraph 2' it says:

" 'The entire paragraph No. 2 is to be eliminated from the agreement.' "

Thereupon, Exhibit 41-4 for identification, being letter from First General Vice-President to Mr. Ryan, dated December 23, 1938, was read in evidence, as follows:

" 'Dear Sir and Brother:

" 'As per our telegram to you we are accepting the changes to be made in the agreement, but with reference to your letter wherein you quote what was submitted by Mr. Edwards of Oakland, wanting to set up a Six County Conference Board, we do not feel that is in our jurisdiction, and is a matter for the Employers to reach an understanding amongst themselves, if they desire a set-up of that kind, as our instructions have been to the additional counties included in this agreement reached was that wages, hours and conditions would all be uniform for the Six Counties. [380]

" 'Yours fraternally,

**FIRST GENERAL
VICE-PRESIDENT.' "**

Thereupon, documents marked U. S. Exhibit 41-4 for identification were admitted in their entirety in evidence as U. S. Exhibit 41-4.

Thereupon, paragraphs 17 and 18 of the June 15, 1938, agreement were read, as follows:

“In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mill or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase, working and sales of the following products is excepted:

Dowels

Panel stock

Stock Plywood Panel

Veneers

Machine carved, pressed or Embossed mouldings

Lumber, rough or surfaced

Rustic and Clapboard Stepping

Sheathing surfaced

Flooring 13/16x3—13/16x4

13/16x6—1-1/8x4

Douglas Fir—T&GV or T&GV&CV

3/8x4—3/4x4

Redwood T&GV1S—Bead 1S 3/4x4

3/4x6

“18. The purchase and sale of the following products is excepted:

Pine, Redwood and Philippine Mahogany
Doors

1 Pannel

10 Light or French

5 cross pannel

1 light 1 pannel

1 light 3 pannel

Pine Garage Doors—6 light 6 pannel

“‘Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any Buyer. Nothing herein is to be interpreted as in any way interfere with any business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws.’”

Thereupon, the new paragraph 17 from the last 1938 [381] agreement, the final paragraph was read, as follows:

“Mr. Glark: Paragraph 17: ‘In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto.

“‘The purchase working and sales of the following products is excepted:

“‘Dowels

Pannel Stock

Stock Plywood Pannel

Veneers

Machine Carved, pressed or Embossed Mouldings

Lumber, rough or surfaced

Rustic & Clapboard

Stepping

Sheathing surfaced

Flooring 13/16x3—13/16x4

13/16x6—1-1/8x4

Douglas Fir—T&GV or T&GV&CV

3/8x4—3/4x4

5/8x4—Bead 1S3/4x4

Redwood T&GV1s—Bead 1S3/4x4

3/4x6

“The purchase and sale of the following products is excepted:

Pine, Redwood and Philippine Mahogany
Doors

1 Pannel

10 Light or French

5 Cross Pannel

1 Light 1 Pannel

1 Light 3 Pannel

Pine Garage Doors—6 light 6 pannel

“Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any Buyer. Nothing herein is to be interpreted as to in any way inter-

fere with any business of the Federal Government, or that of any inter-state common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws.' "

Thereupon, it was agreed that only the parts of Exhibit 41-4 which were read should be in evidence.

Thereupon, Mr. Tuttle read from section 60 of the constitution and laws of the United Brotherhood of Carpenters and [382] Joiners of America, as follows:

"Mr. Tuttle: The beginning here is: 'Label, Section 60.

"The attached design of label shall be the official label of the United Brotherhood.'

"Then there is a diagram, your Honor, about two and a half inches long and half an inch high. It says, 'Union Made. Issued by Authority of United Brotherhood of Carpenters and Joiners of America Organized 1881 Registered 1900.' And then it says:

"Each label shall have the factory, shop or mill number stamped thereon. Whenever a label is applied without the factory number thereon it shall be regarded as forged. The factory numbers, in conjunction with the name of the District Council or local union issuing said label, will thus permit recognition of the product of any particular factory in any part of the jurisdiction of the United Brotherhood.'

"From subparagraph N there is something I will read:

"It shall be the duty of all district councils, local unions and each member to promote the use of trim and shop made carpenter work, hotel, bank, bar, store and office fixtures, and of church, school, household furniture, etc., and to make generally known to the members of the local union that it is necessary to all mill and shop members and the United Brotherhood that products made in factories, shops or mills where only members of the United Brotherhood are employed should be installed by fellow members."

"Now, turning to the objects of the United Brotherhood, one section here, section 2:

"The objects of the United Brotherhood are: To discourage piecework, to encourage an apprenticeship system and a higher standard of skill, to cultivate friendship, to assist each other to secure employment, to reduce the hours of daily labor, to secure adequate pay for our work, to establish a weekly payday, to furnish [383] aid in cases of death or permanent disability, and by legal and proper means to elevate the moral, intellectual and social conditions of all our members, and to improve the trade."

"Then section 3 declares affiliation with the American Federation of Labor and then adds this sentence:

"Resolved, that members of this organization

should make it a rule, when purchasing goods, to call for those which bear the trademark of organized labor.'

"Under the subject of jurisdiction are two sentences:

"Section 6. The jurisdiction of the United Brotherhood of Carpenters and Joiners of America shall include all branches of the Carpenter and Joiner trade.'

"Then subparagraph C:

"To subordinate local or auxiliary unions, district, state and provincial councils the right is conceded to make all necessary laws for local and district, state and provincial councils which do not conflict with the laws of the international body.

"In cases where local central bodies are formed, local or auxiliary unions, district, state and provincial councils shall have power to enforce the laws of such bodies, provided such laws do not conflict with the laws of the United Brotherhood of Carpenters and Joiners of America.'

"One sentence about the power of the general president, section 10, subparagraph A:

"He shall supervise the entire interests of the United Brotherhood.'

"The subject of local autonomy. I want to cover the definition of the jurisdiction of local unions, section 25:

"Local unions where no district council exists shall have the power to make by-laws and trade

rules for their government and the members of the United Brotherhood working in their jurisdiction, which shall in no way conflict with the constitution [384] and international laws of the United Brotherhood, state council or provincial council.'

"I will then read from section 26 on the jurisdiction of district councils, their autonomy.

" 'Section 26. Where there are two or more local unions located in one city they must be represented in a Carpenters District Council, composed exclusively of delegates from local unions of the United Brotherhood, and they shall be governed by such laws and trade rules as shall be adopted by the district council and approved by the local unions and the first general vice-president.'

"Now, this finally on the subject of local autonomy, which is under the heading 'General Strikes and Lockouts.'

" 'Section 59. Job or shop strikes are to be conducted on rules made by the district council or the local union where a district council does not exist. A trade demand inaugurated by a local union affiliated with a district council must be endorsed by the district council and submitted to the general executive board for their sanction.

" 'Where a district council exists it shall adopt rules for the government of strikes and lockouts in that district, as provided for in the constitution and laws of the United Brotherhood.' "

WILLIAM GILSON

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell;

I am a cabinet shop owner. My company is a member of Lumber Products Association and has been since it started this last time—I think about the fall of 1938. The purpose of the association is to have a united front to deal with the unions [385] for wage scales, arbitration and so on. The association has an employee, Harry Gaetjen, authorized to negotiate and execute contracts with Millmen's Union 42. Prior to incorporation of the association in the fall of 1938, I believe there was an unincorporated association. I joined Lumber Products Association, Inc., an incorporated association, in the fall of 1938. Carl Warden or Jack Hart were authorized to sign a contract on behalf of the Lumber Products Association with Millmen's Union 42 in the fall of 1938. The members were Hart and Warden, Central Mill, Liberty Mill, Eureka Mill, Karp & Son, Erickson & Wagner, Acme Manufacturing Company, Brannan Street Planing Mill, Central. I am sure I was not a member before it became incorporated.

Cross-Examination

By Mr. Faulkner:

We make all sorts of woodwork, all sorts of cabinets, office furniture, partition work and things of

(Testimony of William Gilson.)

that kind. Very few kitchen cabinets, mostly office cabinets. I am a millman, in a sense. I belong to the millmen's association, but I don't install anything. I joined Lumber Products Association, Inc. in 1938. I didn't personally sign the agreement with the millmen's union. I saw the agreement here to-day, and that, I believe, is the first time I ever saw it. The terms were discussed with me by Harry Gaetjen at one of the meetings.

HAWLEY E. STRONG

recalled by the United States.

As I previously testified, I am an auditor and was employed in 1936 and 1938 by Mr. Edwards, the business agent of Millmen's Union 42. He said there was a contract between the union and the employers association which called for an increase of the wages as of a certain date with the proviso that any work that was accepted by the employer prior to that date was to be finished at the old rate of wage. I was [386] furnished with a copy of the contract by Mr. Edwards.

A representative of the employers association and the business agent of the union and myself proceeded to call on the employers involved. In the case of the Cabinet Manufacturers, Mr. Ennes was the representative of the employers. Mr. Edwards was the business agent.

(Testimony of Hawley E. Strong.)

We called on Mullen Manufacturing Company and spoke to Mr. Mullen, and he called in his secretary or bookkeeper. In 1938, we saw Mr. Eugene Elkus, Jr. at Mangrum, Holbrook and Elkus. I saw Mr. Stauffacher at the Fink and Schindler Company. I talked with both Mr. Sichel and Mr. Randolph at the Exposition Woodworking Company in 1938, but Mr. Sichel was the one we had our business with. We talked to Mr. Emanuel at L. & E. Emanuel. I don't remember who we saw at the Unit-Bilt Fixture Company. We saw Mr. Schulte at H. Schulte and Son. We saw Mr. Ostlund at Ostlund and Johnson. We saw Mr. Kuhn at Braas and Kuhn. We talked with Mr. Kulcher at L. Kulcher Company in 1938.

In 1936 we called on Mullen Manufacturing Company with Mr. Ennes, representative of the employers, who immediately introduced us and explained why we were there. He said, "We are here to check up and find out what work you have on hand which would extend beyond the date of the contract." The business agent said that there was not much old work here and that he thought they could agree on an acceptable date by conferring with the men in the shop. I believe that was done in that case.

We went to each of the companies and audited the books of those employers and talked about that audit to the persons named. At such times, I had in my possession a copy of the contract, but the only

(Testimony of Hawley E. Strong.)

subject matter discussed was the matter of making the audit under the terms of the contract. [387] The manufacturers I mentioned knew that the scale had been changed.

ALBERT WILLIAMS

called as a witness on behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

I started my apprenticeship in 1906 or 1907, and have been practicing as an architect since 1928 or 1929, in San Francisco, doing general commercial work. I have been doing work for Roos Bros. since 1932. I did store designing, starting back in 1935, which we did not finish until some time late in 1937. It was remodeling, installing new store fixtures and new store designs. The Men's Sports Department was contracted the latter part of 1936, I believe, and the work done in 1937.

"Q. Who installed that job?

"Mr. Faulkner: We object to all of this on the ground it is immaterial, irrelevant, and incompetent, and not within the scope of the charge in this indictment, * * * [388]

"The point of our objection is that this subject-matter does not relate to millwork and patterned lumber, does not relate to the combination charged

(Testimony of Albert Williams.)

in the indictment, does not relate to the object of the conspiracy as charged, nor does it relate in any way to the interstate commerce alleged to be involved in this case. This testimony relates to the installation, which embraces designing finished products of woodwork, electric lighting, glass in a store in San Francisco, the store being the ultimate consumer. It is not charged in the indictment, it is remote from the charge in the indictment, and we object to it on those grounds.

"The Court: I am of the opinion that these fixtures are included in the definition of millwork and patterned lumber. The objection is overruled.

"Mr. Faulkner: Your Honor, that is not my point. My point is that the installation, work of installation, is not millwork and patterned lumber.

"The Court: Installation is included, it is a part and parcel of the same thing. The objection is overruled."

The Sports Department contract was let to Walter Manufacturing Company. My recollection is that besides Walter Manufacturing Company, Fink & Schindler, L. & E. Emanuel, Mullen Manufacturing Company, and Ostlund & Johnson were bidders. My recollection is that Grand Rapids Store Fixture Company, at Portland, Oregon, had it in with a sub-bid. Their sub-bid went with this bid which was accepted. Ed Hoskins from the Grand Rapids Store Fixture Company, did the designing for the fixtures. Before the fixtures arrived for installation I had a telephone call from D. H. Ryan, Dave Ryan,

(Testimony of Albert Williams.)

secretary of the Carpenters Union. He said that the Union could not install these fixtures in San Francisco, due to the fact that they had been made outside on a less wage scale. I suggested we talk about it, and he came to the office later. At the office conversation, words were [389] said to the same effect: Mr. Ryan's general point was that he didn't think it was fair that San Francisco people should be walking the streets looking for work, while at the same time work was being sent out of San Francisco to be done in locations with a less wage scale. He told me then they would not install the fixtures. Grand Rapids Company at that time had the right to use the union label. They were what we called a union shop. I told Mr. Ryan that from where I stood it looked like the Union Label should be good anywhere, if it was a Union Label it should be a Union Label anywhere in the country. I don't remember in words what he said, but it always came back to the same thought: the less wage scale there, that men looked for work here.

Two or three days thereafter there was another conversation with him. Generally speaking, the same as the first one, except I brought up the point that Roos Bros. would not be able to continue their installation of the rest of the work until that Sports Shop had been installed. We discussed that angle of it for some time. We finally agreed if I would see the rest of the work was let in San Francisco, he would install those fixtures.

(Testimony of Albert Williams.)

The Western branch of the Grand Rapids Fixture Company is in Portland, Oregon.

Exhibit 165 for identification, is a copy of the agreement signed by Mr. Ryan and myself. The document was admitted in evidence and marked U. S. Exhibit 165.

"This is a memorandum on the letterhead of Williams & Grimes.

"Williams & Grimes

Albert R. Williams, Architect
251 Post Street, San Francisco, California.

Tel.: EXbrook 1557.

"March 22, 1937

"Memorandum of Agreement between
Albert R. Williams, Architect and
D. H. Ryan, Secretary of Bay Counties District
Council of Carpenters. [390]

"This will confirm my verbal agreement with you regarding installation of store fixtures in that certain job in San Francisco which we discussed.

"In view of the fact that you have authorized the Walter Manufacturing Company to install these fixtures made by their subcontractors in Portland, Oregon, I herewith give you my assurance that the fixtures for the remaining portion of the work will be made in San Francisco by firms employing Union labor.

.....
ALBERT R. WILLIAMS,
Architect.

(Testimony of Albert Williams.)

In view of the assurances above given, Union carpenters will install under Union conditions that part of the work contracted for by the Walter Manufacturing Company.

.....
D. H. RYAN.' "

The fixtures of the Grand Rapids Company were later installed. Grand Rapids Company were not successful on other bids. They were high. Contracts for the installation of the fixtures in the other departments went to local manufacturers. I must have notified Grand Rapids Company when I had the call from Mr. Ryan. I know Mr. Smith and Ted Hoskins. Mr. Hoskins was in and out of my office during that period, and my office notified him or told him of it. Thereafter, Mr. Smith called with reference to other work they were thinking of bidding on. About two years later, around 1939, he called on me to see if I would arrange a conference with Dave Ryan, with a view to seeing if these objections in 1936 on the Grand Rapids fixtures—

At Mr. Smith's request, I arranged a conference with Mr. Dave Ryan. Mr. Ryan came to my office first, and later on Mr. Hoskins and Mr. Smith were there. The general drift of the conversation was the same. He had said before that he still didn't think it was fair for work to be let outside of San Francisco, under a less wage scale. I didn't talk to Mr. Ryan any further [391] about it. I had the Oxford Hotel job and remember Mr. Smith calling on me

(Testimony of Albert Williams.)

with reference to some installations in it by the Grand Rapids Company.

Cross Examination

By Mr. Faulkner:

I was acting in strictly a professional capacity for Roos Bros.—not for the purpose of selling millwork or patterned lumber. I was designing and remodeling that store, which required commercial fixtures and store fronts to be installed. I believe I know as an architect what millwork and patterned lumber is. The work for which bids were called was installation of what we call fixture work and general contracting work. It included store fixtures such as show cases, wall cases, display units, etc., a certain amount of laths and plaster, paint, canvas,—anything that entered into making the installation—hardware and glass would go with the fixtures.

Mr. Hoskins of the Grand Rapids Company participated with me in the drawing of certain parts of the designs. Mr. Hoskins was soliciting the opportunity of actually bidding on the fixture work. Mr. Hoskins was not to receive a commission or a payment for aiding in the designing of the job. He was not to secure at least 10% of the work allotted in consideration for designing the work.

The designs I made were approved by Roos Bros., and I was told to go ahead. I had a visit from Mr. Ryan after the contract had been let for the men's sports section.

(Testimony of Albert Williams.)

The carriage entrance work was let to the Mullen Manufacturing Company without competition of any kind—no bids were called for on this work.

Walter Jacobi of Walter Mfg. Company is a commercial fixture man. There were about four bids on the work in the men's sports section. The Walter Mfg. Company was the low bidder. [392]

In connection with my conversation with Mr. Ryan, I worked out an agreement whereby the Walter Mfg. Company was to go ahead with the installation of the men's sports section. The balance of the work was to be given to local firms.

A number of different people were low bidders for different parts of it. They were all bidding in competition with the Grand Rapids or the Walter Mfg. Company.

The work I gave to the Commercial Fixture people after my understanding with Mr. Ryan was the work they were the low bidder on. I knew they were the low bidder when I entered into the agreement with Mr. Ryan. The local commercial fixture people were the low bidder on every part of the Roos Bros. job except the men's sports section and the carriage entrance that was not open to bids.

There was nothing in my conversation with Mr. Ryan or any union men that had any connection with awarding the carriage entrance to the Mullen Mfg. Company. I had all the bids in my possession at about the time Mr. Ryan came in; or a little before, covering substantially the entire work.

(Testimony of Albert Williams.)

Ultimately, all the work that had been bid on by the Walter Mfg. Company was installed. It bore the union label. I know the Grand Rapids people ordinarily do their work in conjunction with some local commercial fixture company who do the installing. They usually make arrangements with some independent contractor to install it.

Cross-Examination

By Mr. Routzohn:

There were 8 or 10 separate jobs upon which bids were asked for in the remodeling of the Roos Bros. store.

Redirect Examination

By Mr. Clark: [393]

Walter Manufacturing Company installed the work on the sports section with San Francisco labor and with a supervisor from the Grand Rapids people. The Walter Manufacturing Company were themselves on the job and bid on the incidental work, not consisting of fixtures, like painting and plastering. I don't recall that the bid would show that. The bid was taken from Walter Manufacturing Company, it included the fixtures. [394] The fixtures were sublet to the Grand Rapids people and were made in Grand Rapids. The superintendent was sent out, but San Francisco labor installed them—that is the usual custom. I know that the Grand Rapids figures—I remember the fourth floor—were a great deal higher than the rest

(Testimony of Albert Williams.)

of the bids—possibly around 50 per cent. I don't recall the fifth floor section. They did not bid on the other parts of the work.

Recross-Examination

By Mr. Faulkner:

Walter Manufacturing Company included in their bid the cost of certain fixtures from the Grand Rapids people. Balance of their bid was made up of painting and a great many other items. That is likewise true of the bid of Walter Manufacturing Company in other phases of that improvement. Except for the carriage entrance, Walter Manufacturing Company prepared bids for our concern that included certain fixtures and the work of installation in making the remodeling job complete. Walter was bidding on his own work and on certain of the merchandise of Grand Rapids people. Bids of commercial fixtures people included the same, based upon the same set of drawings and specifications. The only spread on bids I recall is the one instance on the fourth floor.

Redirect Examination

By Mr. Clark:

According to this paper my recollection was wrong—it says Grand Rapids—according to that statement it wasn't Walter who bid on the fixtures for the sports shop. My recollection on it has always been that the bid came to me through the Walter Manufacturing Company. You show me that, and I

(Testimony of Albert Williams.)

can't be too sure about it. Grand Rapids Fixtures come from Portland, Oregon.

Recross Examination

By Mr. Faulkner:

A great deal of the materials for the fixtures manufactured [395] here by local people come from out of the State.

Thereupon, paper from which witness refreshed his recollection was marked defendants' Exhibit F for identification.

CLERK'S COPY.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 600 6

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 607 7

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 608 8

LUMBER PRODUCTS ASSOCIATION, INC., ACME MANUFACTURING
CO., INC., EUREKA SASH, DOOR & MOULDING MILLS, ET AL.,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 609 9

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES
COUNCIL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 610 10

BOORMAN LUMBER COMPANY, HOGAN LUMBER COMPANY, LOOP
LUMBER & MILL COMPANY, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { NOVEMBER 11, 1944.
NOVEMBER 13, 1944.

CERTIORARI GRANTED JANUARY 2, 1945.

No. 10011

United States
Circuit Court of Appeals
For the Ninth Circuit.

LUMBER PRODUCTS ASSOCIATION, INC.,
a corporation, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Four Volumes

VOLUME II

Pages 477 to 947

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

EDWARD A. McCREEDY

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am treasurer of Grand Rapids Store Equipment Company, located in Grand Rapids, Michigan. The business is manufacture and sale of store fixtures. We have a subsidiary in Portland, Oregon, whose business is the same nature as our own. I handle the financing and assist in the general management of both companies, including some supervision over the sales. I know the Portland company had a contract to install certain fixtures at Roos Bros., in San Francisco, in the fall of 1936. I think the contract was made about October, 1936. I think the fixtures were finally installed in May or June, 1937. I met Mr. Dave Ryan in July of 1938 at the Sir Francis Drake Hotel. Mr. Harry Smith, our local representative, was present besides myself and Mr. Ryan. I called on Mr. Ryan because we had some trouble on the installation of the Roos Bros. job, and I came down to see if there was not something we could do to get that cleared up. I recall some of the conversation. As I recall it, I asked Mr. Ryan if there was not something we could do to get together on this thing so we could get more business in this district, because we had signed a union agreement and had a union label on our goods. I could not understand why we could have any trou-

(Testimony of Edward A. McCreedy.)

ble in getting it installed in this city. Mr. Ryan told me that they could not do that, because our labor rate that we paid in Portland was not on the same basis as the labor rate here, and unless our wage rate was the same they could not work with us on it. I asked him at that time if we couldn't work out [396] some arrangement whereby we could pay the San Francisco rate on such work as we shipped into this town, and he said he didn't think they would stand for that.

Since reading an excerpt from a letter I wrote to Mr. Swindells, President of our Portland Company, on August 20, 1938, I recall further details of this conversation with Mr. Ryan. At that time, I asked Mr. Ryan if there was any understanding with the local manufacturers here regarding getting our work in here, and he said that there was. Following the conversation with Mr. Ryan, I think in early September, 1939, I talked to Mr. Meadows, one of the vice-presidents of the Carpenters and Joiners Union, at the office of United Brotherhood in Indianapolis. He referred me to M. A. Hutcheson. I talked to both Mr. Meadows and Mr. Hutcheson,—Mr. Straayer, our general superintendent, was with me. I explained to Mr. Hutcheson the trouble we were having out here and asked if he could not help us on it, and Mr. M. A. Hutcheson said that was a matter that his father would have to take care of when he came back. I think he was in Florida. And he said he would take it up when he came

(Testimony of Edward A. McCreedy.)

back to the office and let us hear from him, but he said he saw no reason why we should have any trouble as long as we had the union label. I have been in correspondence with Mr. M. A. Hutcheson since then.

Government's Exhibit 166 for identification is copy of a letter I wrote to Mr. Meadows on September 6, regarding trouble we were having on the Penney job. Government's Exhibit 167 is the reply.

Letter marked 168 is copy of letter I wrote to our New York Manager, Mr. Lockwood, about the Penney matter. [397]

EDWARD A. McCREEDY

By Mr. Burdell:

Exhibit 170 consists of copies of letters between Mr. Hutcheson and me. The carbon copies are of letters sent by me to the general office and the originals are the answers received from the general office.

Thereupon plaintiff's Exhibits 166, 167 and 170, for identification, were introduced in evidence.

"Mr. Burdell: If the Court please, I desire to read the letters at this time. The first letter is a carbon copy dated September 6, 1938, addressed to Mr. S. P. Meadows, Second General Vice President of the United Brotherhood of Carpenters and Joiners of America.

(Testimony of Edward A. McCreedy.)

"Mr. S. P. Meadows

Second General Vice President

U. B. of C. and J. of A.

Carpenters Building

222 East Michigan Street

Indianapolis, Indiana.

"Dear Mr. Meadows:

We were advised today by the J. C. Penney Company that the San Francisco Local Union would not permit our equipment to be installed in their store in that city even though we did have a label, so it was necessary for us to wire our Portland Plant to cancel this order so that they could purchase same elsewhere.

Fortunately, due to our visit with you last week, I was able to advise our New York office that we had already discussed this matter with you but that owing to the fact that it might take some little time to work it out, it would be best to cancel this order so as not to inconvenience our customer.

I do hope you will be able to help us in this situation and that you will let us hear from you as soon as you have had an opportunity to discuss the matter with Mr. Hutchinson.

I wish to take this opportunity to thank you for the [398] courtesies extended to Mr. Straayer and me on our recent visit and hope that you will be successful in working out some satisfactory ar-

(Testimony of Edward A. McCreedy.)
rangement with the San Francisco Local.

Sincerely yours,

Treasurer
GRAND RAPIDS STORE
EQUIPMENT CO.

“Mr. Burdell: This is an original dated September 9, 1938, on the letterhead of William L. Hutcheson, General President, United Brotherhood of Carpenters and Joiners of America, Office: Carpenters' Building, 222 East Michigan Street, Indianapolis, Ind.

“September 9, 1938.

“Mr. E. M. McCreedy, Treasurer,
Grand Rapids Store Equipment Co.,
Grand Rapids, Michigan.

“Dear Sir:

“This will acknowledge receipt of your communication of September 6th, wherein you relate the conditions confronting you in San Francisco and state you were advised by the J. C. Penney Company that the San Francisco Local Union would not permit your equipment to be installed in their store there even though you did have a label, therefore you wired your Portland plant to cancel the order.

It is regrettable that such a condition should develop, and if you will ascertain who it was that made such statement to the representative of the J. C. Penny Company that they would not install the fixtures, I assure you we will have the matter

(Testimony of Edward A. McCreedy.)

investigated, however, it is necessary that we have this information before we will be able to proceed in the matter.

Very truly yours,

M. A. HUTCHESON,

For the General President.

“Mr. Burdell: The next is a carbon copy dated September 23, 1938, addressed to Mr. Wm. L. Hutcheson, General President. [399]

‘Mr. Wm. L. Hutcheson, General President,
United Brotherhood of Carpenters and
Joiners of America
222 East Michigan Street
Indianapolis, Indiana

‘Dear Mr. Hutcheson:

‘I have your letter of September 9th and trust you will pardon me for the delay in replying as I have been out of the city for ten days.

‘As per your request, I have secured a letter from the J. C. Penney Company setting forth the facts in this matter and enclose herewith a copy of the same for your records and hope that with this information you will be able to make a proper investigation of this matter, because as I told Mr. Meadows early this month, we had a similar situation arise last spring on a shipment made from our Portland, Oregon, plant to San Francisco.

‘I gave Mr. Meadows all the details in connection with this matter and believe that if you would dis-

(Testimony of Edward A. McCreedy.)

cuss it with him you will be able to secure full information regarding the same.

'We trust you will let us hear from you soon as we are anxious to get this matter cleared up at the earliest possible date, because, undoubtedly, we will have further shipments for the J. C. Penney Company in this same territory and we do not want to inconvenience our customer again.

'Naturally, when our customers specifically state in their orders that the goods must bear the union label, having a contract with your union, naturally, we accept the orders because we were under the impression that having signed a contract with your union, all of your locals in the United States would recognize your label; but such does not seem to be the case, as we have recently had some of our former customers in St. Louis and Cleveland tell us that your local unions at those points had made the statement to them that they would not install our fix- [400] tures even though they did bear the union label.

'We have done our part in carrying out the provisions of this contract and feel that immediate action should be taken by you to remedy this situation.

'Appreciating your early advice, we remain

Yours very truly,

**GRAND RAPIDS STORE
EQUIPMENT CO.**

.....
Treasurer.'

(Testimony of Edward A. McCreedy.)

"Mr. Burdell: Next is another carbon copy dated September 27, 1938, addressed to Mr. William L. Hutcheson, General President:

"Mr. Wm. L. Hutcheson, General President
United Brotherhood of Carpenters
and Joiners of America
222 East Michigan Street
Indianapolis, Indiana.

"Dear Mr. Hutcheson:

"Since writing you on September 23rd we are in receipt of a letter from our Portland Plant advising that they have been asked to figure on a job for the Hastings Store in San Francisco, California, and are writing to inquire as to whether or not they should put in a figure on this job in view of the difficulty we were having with your local union on the J. C. Penney job.

"As we are anxious to figure this work if possible, we would appreciate hearing from you at your earliest convenience as to whether or not we can count on your support should we be successful in securing this work.

"Appreciating an early reply, we remain
Cordially yours,

.....
Treasurer.

GRAND RAPIDS STORE
EQUIPMENT CO."

(Testimony of Edward A. McCreedy.)

“Mr. Burdell: The next is an original on the letterhead of Wm. L. Hutcheson, dated September 29, 1938, addressed to Mr. E. A. McCreedy, Treasurer. [401]

September 29, 1938.

Mr. E. A. McCreedy, Tres.
Grand Rapids Store Equipment Co.
Grand Rapids, Mich.

Dear Sir

“I am in receipt of your letter of September 23, wherein you enclose copy of letter from the J. C. Penney Company and it would be very helpful to us if we had the name of the party connected with our Union who informed the J. C. Penney Company in San Francisco that your fixtures would not be installed in their store.

“For your information will say that I am immediately *bring* this matter to the attention of one of our general representatives to see if he can get to the bottom of the thing and straighten out the situation in a satisfactory manner.

Fraternally yours,

S. P. MEADOWS,

For the General President.’

“Mr. Burdell: Next is also an original on the letterhead of William L. Hutcheson dated September 29, 1938, to Mr. E. A. McCreedy, Treasurer, Grand Rapids Store Equipment Company, Grand Rapids, Michigan.

(Testimony of Edward A. McCreedy.)

'Dear Sir:

'Replying to your letter of September 27th with reference to figuring on a job for the Hastings Store in San Francisco, California, will say that I am immediately forwarding your inquiry to First General Vice President M. A. Hutcheson, requesting that an immediate reply be made so you will be in possession of the information you desire.

Very truly yours,

S. P. MEADOWS,

For the General President.'

"Mr. Burdell: Next is a carbon dated October 18, 1938, [402] addressed to Mr. S. P. Meadows, Second General Vice President.

'Mr. S. P. Meadows,
Second General Vice President
United Brotherhood of Carpenters
and Joiners of America
222 East Michigan Street
Indianapolis, Indiana.

'Dear Mr. Meadows:

'Having heard nothing further from you since your letter of September 29th, I am writing to inquire as to whether you have heard anything further on the situation in San Francisco as we now have another job that we are figuring on in that city on which we believe the merchant will demand a guarantee that the union will not interfere and, of course, you can appreciate this puts us in a rather

(Testimony of Edward A. McCreedy.)

awkward position in view of our recent experience there.

'Consequently, we would appreciate your early advice in this matter.

'Trusting to hear from you shortly and with kindest personal regards, I remain

Cordially yours,

.....
'Treasurer,
GRAND RAPIDS STORE
'EQUIPMENT CO.'

"Mr. Burdell: The last is an original on the letter of William L. Hutcheson dated October 20, 1938, addressed to Mr. E. A. McCreedy, Treasurer, Grand Rapids Store Equipment Co., Grand Rapids, Michigan.

'Dear Mr. McCreedy:—

'Your communication of October 18th in which you make inquiry concerning your letter of September 29th has been received. The reason we delayed answering your former letter was owing to the fact that we were having an investigation made in an endeavor to learn just who gave out the information that the material for the J. C. Penny Job would not be erected, and our representative reports that he has been unable to find anyone [403] connected with the Penny Company who had been given this information.

'With reference to shipping the material for the present job which you are now making up, we see no reason why you should hesitate to ship that ma-

(Testimony of Edward A. McCreedy.)

terial whenever you see fit to do so, and we are sure you will have no difficulty in having your fixtures installed.)

Yours very truly,

M. A. HUTCHESON,

For the General President.

We didn't correspond any further because we seemed to be getting no where. We do not have a contract with the J. C. Penney Company to do all of its work, but we get blanket orders from them. The particular order referred to in my letter was cancelled. I testified to a conversation with Mr. Ryan that took place in 1938. I had another one in the latter part of May, 1939, at the Sir Francis Drake Hotel. No one was there besides myself and Mr. Ryan.

I brought up the same old subject and asked him if there was anything further we could do to correct that situation and he said there was not, that everything was just about the same as it was at the time of our last meeting in 1938. I do not recall at this conversation there was any mention of the agreement referred to in the previous meeting with Mr. Ryan.

At the time of the meeting we had no sales connection in San Francisco. We had a salesman here who was Mr. Harry Smith. We do not have a salesman here at the present time. We have a sales connection with the Unit-Built Store and Fixture Company. They operate under a license agreement. That

(Testimony of Edward A. McCreedy.)

arrangement was made by Mr. Young, our president. I know the details surrounding it and why it was made. [404]

Cross Examination

By Mr. Faulkner:

In 1936 I held the same position with Grand Rapids Company I hold now. I am with the parent corporation, the Michigan corporation. We have a Grand Rapids Company at Portland and a branch of the Grand Rapids Company in Los Angeles.

I did not participate in the Roos Bros. transaction in 1936. I knew of the existence of the contract. The fixtures were to be installed in the Sports Wear Department, consisting of show cases, wall cases, counters and things of that nature. I think they are oak fixtures. I saw them after they were installed, glass and woodwork. If there are reflectors in the show cases we may have put them in. We received one order for installation for Roos Bros. in October, 1936. I don't know the range of the bids.

My trip to San Francisco and talk with a Union representative was in July, 1938, after the Roos Bros. job was in. My first talk to a Union representative was in July, 1938.

The Penney transaction did not take place until the first of September of that year. I know we have a contract for the preparation of fixtures for the Penney Company in certain districts. I know other fixture companies have contracts with the

(Testimony of Edward A. McCreedy.)

Penney Company in other districts. I know that in San Francisco Unit-Built Fixture Company had a contract with the Penney Company for this district. In 1938 I think the premises involved in the J. C. Penney matter was at South San Francisco.

My conversation with Mr. Ryan was after the Penney transaction in May of 1939, that is the second conversation. The first was in July, 1938. The Penney transaction was a little later in 1938. The first conversation with Mr. Ryan did not relate to the Penney transaction.

At the time of the first meeting I came to the Sir [405] Francis Drake Hotel and sent for Mr. Ryan. I asked him why we were having trouble.

I do not think it was always the case that our prices were higher than the local commercial fixtures here, that might have been the case on some occasions, it frequently is on any job we have. I am not familiar with the price on the Roos Bros. job. I am not familiar with the effort of our company to secure the work concerning the Joseph Maguin Company. I remember hearing something about it, but I know nothing of the details. I don't know that the Grand Rapids Company bid was \$13,000.00 and the job was let to the Emanuel Company, and the Unit-Built Company for \$9500.00.

We include in the work of our company the matter of designing the work for installation. After designing a particular job the practice is to make a bid. If the bid is accepted we manufacture a

(Testimony of Edward A. McCreedy.)

great deal of it in Portland or Michigan, and it is then shipped into the district wherever we are to make the installation. Usually we have local union labor, local carpenters, make the installation. That was true in 1936 up to 1940.

In 1936 we did not have a working arrangement with Ful-Vue Fixture Company. Mr. Smith was our representative in this district. Not in connection with his own business, that we knew of.

In 1940 we had an arrangement with Unit-Built Fixture Company, that is the company that Mr. Roselyn is with. In 1940 the relation was that they were operating under a license agreement, whereby we licensed them to manufacture our type of equipment on a royalty basis.

I don't think one of our problems in this market was lack of facilities to complete the entire job, close to the job. Our articles, manufactured in either Michigan or Portland, [406] came by rail crated. One of our problems in meeting competition in this district was the freight rate on transportation of the articles from the place manufactured to the place where they were to be installed.

Mr. Roselyn has not, that I know of, of my own knowledge, bought quite a quantity of our equipment. Those orders go through our Portland office. The Portland orders do not pass through my hands. I do not know about the Gump job.

Many of our fixtures are patented. It is in connection with those patented fixtures that we have

(Testimony of Edward A. McCreedy.)

licensed Unit-Built Fixture Company, to not only install, but to build. The general practice has been to install the fixtures with local labor, with one of our construction or installation superintendents.

I think I mentioned the Penney installation to Mr. Ryan on my second visit there. I did have a conversation about it with Mr. Meadows and Mr. Hutcheson in Indianapolis. The conversation with Mr. Ryan was after the event, in May, 1939. The Penney matter was up in the first of September, 1938. In 1938 the Grand Rapids Company cancelled an order for installing fixtures in the Penney Company in South San Francisco.

During the period the transaction was pending, I did not talk to any Union representative myself, only Mr. Ryan. I may have mentioned it to Mr. Ryan in 1939, when I was here, but I had only correspondence with the Union, which has been read in evidence. I did not have any conversation with a local union man in connection with the J. C. Penney job in South San Francisco at the time the order was cancelled.

They told us they wanted the order cancelled because they had been told by the Unions they would not install it. That was on a teletype message to me from our New York manager. We also have a letter from the Penney Company. No one from the [407] Penney Company told me why that installation was not made.

"Mr. Routzohn: We ask, your Honor, all of this

(Testimony of Edward A. McCreedy.)

conversation be ruled out as being incompetent, irrelevant and immaterial and hearsay.

"The Court: Motion is denied."

Mr. Wieland of Penney Company was in our office after that happened. I think he talked about it to me and also our general superintendent, Mr. Straayer. I don't know whether the Penney Company installed in the South San Francisco Store the fixtures in the Vacaville store.

Cross Examination

By Mr. Routzohn:

I would say that local union carpenters have not installed our work where we have made sales in San Francisco in all instances, but Penney Company was one instance. Any installation work that has been done in this territory for us has been done by Union men. We had a sale in the Penny instance that was not installed. All work that has been installed in the San Francisco territory has been installed by Union carpenters.

I saw Mr. Ryan one time in July, 1938, again in May, 1939. I knew there was some talk about a change in wages here when I talked to him in July, 1938, I didn't know about an arbitration proceedings. I don't recall Mr. Ryan discussing that with me. I didn't know by the discussion with Mr. Ryan, or in any other manner, that the arbitrators had incorporated Paragraph 8 in their arbitration award. Mr. Ryan didn't state this was a written

(Testimony of Edward A. McCreedy.)

agreement he had, starting back in 1936, with the employers.

I testified Mr. Ryan talked to me about an agreement with the local manufacturers relative to the wage scale in this [408] locality. I didn't know about a written agreement between the Unions and the local manufacturers. I understood him to say they had an understanding with the local manufacturers. He told me about the condition that they would not work on material that had not been made under prevailing conditions in San Francisco, but he did not say anything about a written agreement.

Mr. Ryan told me that the agreement with the local manufacturers was to the effect they would not set up any equipment not manufactured under similar conditions that exist in the Bay Counties District, that is what I wrote in my letter to our president. The wage scale in Portland, Oregon, was lower than the wage scale in San Francisco in 1938.

Redirect Examination

By Mr. Burdell:

We do business all over the United States. We ship all over the United States by railroads and trucks. Freight or trucking rate is a competitive factor all over the country, not only in San Francisco.

I talked to Mr. Wieland about the Penney job, in Grand Rapids, when he was there. The labor problem must have been discussed. He told me it would

(Testimony of Edward A. McCreedy.)

be necessary to cancel the job only because of the fact that they would not install it here. That is at least one reason for cancellation.

"Mr. Routzohn: Your Honor, we ask that all this be stricken out. I objected to it once before and your Honor did overrule me, but again I would like to make the motion so we can get it in the record."

"The Court: Very well."

"Mr. Routzohn: I ask all this be stricken out as to what somebody in his own concern told him, as being purely hearsay and not binding in any way on these defendants."

"The Court: Denied." [409]

We have had an arrangement with Unit-Bilt Fixture Company since June, 1940. They are permitted to manufacture equipment under our patents on a royalty basis. They purchased some equipment from our Portland Plant. I don't know how much work they have purchased since 1940.

Exhibit 174, for identification, is a letter from Mr. Lewis of the construction department of J. C. Penney Company of New York City, addressed to the Manager of our New York office, confirming the telephone conversation as to cancellation of this order. It is from J. C. Penney Company to our Company in regard to the Penney job.

"Mr. Burdell: I offer this in evidence."

"Mr. Faulkner: We object to it, your Honor, as hearsay."

(Testimony of Edward A. McCreedy.)

"The Court: Overruled.

"Mr. Rontzohn: Same objection.

"Mr. Faulkner: May I call your Honor's attention particularly that this is a letter from a man named Lewis of the Penney Company to the Grand Rapids Company quoting a telegram from somebody else.

That is all hearsay as to the defendants.

"Mr. Burdell: Well, it is the telegram from the J. C. Penney Company, the telegram is quoted."

"The Court: Overruled.

(The letter was marked "U. S. Exhibit No. 171.")

"Mr. Burdell: I will read it, if I may, at this time.

"The Court: Read it.

"Mr. Burdell: On the letterhead of J. C. Penney Company.

"J. C. Penney Company Incorporated, 330 West 34th Street, New York, N. Y.

September 17, 1938

"Grand Rapids Store Equipment Company
420 Lexington Avenue
New York, N. Y."

"Gentlemen:

Attention:—Mr. Lockwood [410]

"Concerning our telephone conversation, we are pleased to quote you verbatim the telegram received from our District Office in reference to the South San Francisco store fixtures:—

(Testimony of Edward A. McCreedy.)

'Union served notice they will not handle Grand Rapids or Weber fixtures for South San Francisco store. Insist fixtures must be made under same conditions wages as Frisco area regardless of union stamp'.

"We trust this is the information you desire.

Yours very truly,

J. C. PENNEY COMPANY, Inc.

H. C. LEWIS,

Construction Department.'

And the signature "Harold C. Lewis,"

"Mr. Routzohn: Your Honor, I move all of this be stricken out for the reason that it is sheer hearsay and that the defendants in this case have no opportunity in the world to answer that sort of an assertion.

"The Court: Denied.

"Mr. Routzohn: By "opportunity," I would like to correct my statement, that we have no way of meeting or ascertaining who made the statement or of tracing it down in order to contradict anything that is stated in there.

"The Court: Well, your client knows whether or not that statement is true.

"Mr. Routzohn: How could he know, if the Court please?

"The Court: Don't argue.

"Mr. Routzohn: We don't know who solicited for the Penney Company. We don't know who

(Testimony of Edward A. McCready.)

talked to a solicitor for the Penney Company. We have no way of ascertaining the basis of that statement or who had anything to do with it.

"The Court: All right. Your objection is overruled." [411]

Re-cross Examination

By Mr. Faulkner:

I received a communication from my office in October, 1938, in which my office pointed out that they had not been informed of who the Union representative or delegate was who had talked about the Penny job. I don't know that it was the fact they had not been informed. The correspondence would indicate that nobody knew who the person was who made the remark about installing the J. C. Penney job. It is true that the correspondence is predicated upon a claim that some Union representative said they could not install a job and nobody knew who the man was who made the statement. Our correspondence is based on what the Penney Company told us, and the Penney Company didn't know who the man was, according to our correspondence, that they talked to.

Thereupon there was introduced in evidence minutes of Alameda Counties Building Trades Council, previously identified as "Exhibit 104".

"Mr. Todd: Your Honor, this may be subject to the objection originally made that these are records produced from a defendant in the action against its will.

"The Court: What is that, Mr. Todd?

"Mr. Todd: I say, it is subject to the objection that we made that these are records of the defendant in the action/produced without their consent and without their stipulation of having an individual take the stand.

"The Court: Overruled.

"Mr. Todd: I believe the objection was previously made, but I wanted to be sure.

"The Court: Yes. Overruled.

"(The minutes were marked "U. S. Exhibit No. 104.")

"Mr. Howland: Referring to the exhibit marked for identification as 104, I will read from page 89 thereof, which is a [412] part of the minutes of the meeting of the Alameda Building and Construction Trades Council of February 1, 1938; under the heading Communications, the following appears:

"From Millmen's Union No. 550. Protesting the importation of special run matched end T&G as it is a direct violation of their agreement with the mill owners and should be manufactured in the Bay District, and therefore requested the assistance of the Council in the matter. Received and the request ordered complied with."

"At page 90 of the same exhibit, from the minutes of the meeting of February 8, 1938, under the heading New Business, the following appears:

"Brother Mike Cicinato president of the Millmen's Union No. 550 was a visitor at the meeting

and called attention of the Council to the fact that the Millmen's Union were going to fight against the importation of special run matched end T&G as it is a direct violation of their agreement with the mill owners and should be manufactured in the Bay District.'

"On page 92 of the same exhibit, the minutes of the meeting of February 22, 1938, under the heading Communications, the following appears:

"From Millmen's Union No. 550 advising the Council that the question of importation of matched end T&G has been referred to the General Office of their brotherhood and requested that no action be taken by the Council. Filed.'

A "Page 106 of the same exhibit, from the minutes of the meeting of June 7, 1938, under the heading Reports, the following appears:

"Business representative J. Reynolds and Glen Hawkins rendered their weekly report which was accepted, Hawkins also recommended that the Council concur in the action of the Teamsters and Clerks and Lumber Handlers in enforcing their [413] agreement wherein no lumber can be shipped directly from the North to the job. The recommendation was concurred in.'

"At page 179 of the same exhibit from the minutes of the meeting of March 5, 1940, under the heading Reports, the following appears:

"Business representative Charles Roe also rendered his weekly report which was accepted and

recommended that Mr. Harvey Brown of the Aladdin Ready-Cut Houses, 2605 East 14th Street, Oakland, be cited to appear before the board of business agents to show cause why he should not be placed on the official 'unfair' list of the Council. Recommendation concurred in.

"At Page 181, from the minutes of the meeting of March 12, 1940, under the heading Board of Business Agents Report, the following appears:

"No. 1. That further investigation be made by the Carpenters Representative and the Council pertaining to the Aladdin Ready-Cut Homes."

Thereupon letter from files of Fink & Schindler Company, identified as "Exhibit 57-4", was introduced in evidence as 57-4, and was read to the jury, being letter from Commercial Fixture and Store Front Institute, Inc., signed J. G. Ennes, Manager, as follows:

"Gentlemen:

"Please attend special meeting Monday, January 30, 1939, 4:00 p. m. sharp."

"To liquidate the Cabinet Manufacturers Institute of California, Northern Division:

"To sign the register for the Commercial Fixture and Store Front Institute (Inc.);

"To receive report on proposed sales tax ruling;

"To discuss and act on other matters of importance.

"Please take note that your failure to respond

and sign [414] the register might cause you to fail to receive such benefits as might be derived through signing same.

Yours very truly,

COMMERCIAL FIXTURE
AND STORE FRONT
INSTITUTE, INC.,

By J. G. ENNES,
Manager."

Similar letter from the files of Mangrum, Holbrook & Elkus was introduced as plaintiff's "Exhibit 60-7".

The same letter from the files of L. & E. Emanuel, Inc. was introduced as "U. S. Exhibit 93-6."

Thereupon letter, identified from the files of L. & E. Emanuel, Inc., from Commercial Fixture and Store Front Institute, Inc., relative to solicitation of subscriptions by the San Francisco Employers Council, was introduced as Exhibit 93-5 and read as follows:

"Gentlemen: The San Francisco Employers Council is soliciting subscriptions from individual shops. They provide for individual memberships or trade association memberships. I am of the opinion the shops should not take out individual memberships.

"If membership is to be taken out it should be an association membership. This in view of the

fact that our labor relations are on an association basis.

Very truly yours,

**COMMERCIAL FIXTURE
AND STORE FRONT
INSTITUTE, INC.,**

By J. G. ENNES,
"Manager."

Thereupon copy of contract of June 15, 1938, from the [415] files of L. & E. Emanuel, Inc. was introduced as plaintiff's Exhibit 93-34.

Thereupon correspondence between M. A. Hutcheson, First Vice-President of the United Brotherhood and D. H. Ryan, Secretary of Bay Counties District Council was introduced in evidence as plaintiff's Exhibits 115-57, 115-58, and 115-59.

"Mr. Howland: The first of these letters marked 115-59 is on the letterhead of the United Brotherhood of Carpenters and Joiners of America, dated June 5, 1938, addressed to Mr. D. H. Ryan, Secretary, Bay Counties District Council, 200 Guerrero Street, San Francisco, California, and bears the stamp signature of M. A. Hutcheson, First General Vice-President:

'Dear Sir and Brother:

'Yours of May 6th enclosing copy of agreement your council entered into with the Associated General Contractors for the two years beginning May 1, 1938 and ending May 1, 1940, has been received and contents noted with interest.

'This agreement is being made a portion of our records for future reference.

'As soon as the agreement is entered into with the Cabinet Manufacturers Association and Planing Mills on both sides of the Bay be sure to forward this office a copy of same, along with a list of the concerns that are parties to this Association, and governed thereby.

'Fraternally yours,

M. A. HUTCHESON,

First General Vice-President.

"The second letter, marked in evidence 115-58, is a letter also to Mr. Ryan from M. A. Hutcheson dated July 7, 1938, and the text of this letter is as follows:

'I In your communication of June 22nd you assured us that an agreement was about ready for signature with the mills and shops in your district, but up to the present time we have not received [416] a copy of the agreement referred to therein.

'Kindly let us have a copy of this agreement along with a list of the concerns that are signatory to this agreement, or the names of the firms that will be governed thereby.

'Yours Fraternally,

M. A. HUTCHESON,

First General Vice-President.

"The third letter, which is marked 115-57 is a letter on the letterhead of the United Brotherhood

of Carpenters and Joiners of America, addressed to Mr. D. H. Ryan, from Mr. M. A. Hutcheson, is dated August 24, 1938, and reads as follows:

“Dear Sir and Brother:

“Late in June you notified this office that your Council was about to reach a satisfactory agreement with the Mills and Shops in your District, but since that time we have failed to hear anything further from you along this line, therefore I am writing to request that you forward me a copy of the agreement entered into, and at the same time furnish us with a list of all the mills and shops that are parties to this agreement, as we cannot permit our label to continue to be used upon the products of a concern in an indefinite manner that is not operating under a signed agreement that is satisfactory, and on file at this office.

‘Awaiting your reply, I remain,

‘Yours fraternally,

M. A. HUTCHESON,

First General Vice President.’ ”

Thereupon four booklets, marked Exhibits 44 to 48, inclusive, for identification, were introduced in evidence as plaintiff's Exhibits 44 to 48.

“Mr. Howland: The booklet marked Exhibit 48 is dated January 1, 1936, and states on the opening page “List of Union Shops and Firms who are using our label on their products,” [417] and on the second page the following appears:

“This list gives the names of all firms having the use of the United Brotherhood label according to the information on file at the general office at the present time. It is subject to change as any firm failing to live up to the agreement under which the label was granted its use is immediately deprived of same.”

“Then on pages 5 and 6 of this booklet, under the heading “California and San Francisco,” the names of the following firms appear: William Bateman, Braas & Kuhn, L. & E. Emanuel, Exposition Woodworking Co., Fink & Schindler Co., Ful-Vue Fixture Co., Mangrum & Holbrook Company, Mullen Manufacturing Co., Ostlund & Johnson, H. Schulte & Son, Unit-Built Fixture Co.

“Mr. Faulkner: The names you read, among others appear?

“Mr. Howland: Yes, there are many other names in the book besides the ones I have read.

“The Court: Proceed.

“Mr. Howland: The other four books, if your Honor please, I will not read. Exhibit 47 is a similar list dated January 1, 1937, Exhibit 46 is a similar list dated January 1, 1938, Exhibit 45 is a similar list dated March 1, 1939, and Exhibit 44 is a similar list dated March 1, 1940. All of these books, and I will not take the trouble to read them, contain listed among other names the names which I have just read, and, in addition, under the heading “California, Oakland,” these four also contain the

name of S. Kulcher & Company, which did not appear in the 1936 book."

E. G. HOSKEN,

called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell: [418] :

I am sales manager for Grand Rapids Equipment Company at Portland. We are affiliated with Grand Rapids Company of Michigan. I joined the company in 1912, and was made sales manager in 1922. I have been sales manager ever since, except for a period from 1931 to 1934, when I was with Weber Showease & Fixture Co., in Southern California. I am also a designer. We are able to sell our products by designing them first and selling the equipment shown in the designs. I do both designing and installing.

In 1936 I did some designing in connection with anticipated bids with Roos Bros. in San Francisco. There were three major programs. I was called in by Mr. Roos about May, 1936, and he outlined the entire program they were contemplating, and in view of the fact we had done considerable work for Mr. Roos, always on a satisfactory basis, he asked me if I would be willing to design and merchandise

(Testimony of E. G. Hosken.)

the Men's Sporting Wear, Boys' Clothing Department on the Fifth floor, the Men's Clothing on the Fourth, which I agreed to do. I was at that time instructed very emphatically I was to work with Mr. Albert Williams, who was appointed the architect by Mr. Roos.

After the designing my company submitted bids for the installation and sale of work to go into those three jobs. The first bid was Men's Sport Department. The Walter Manufacturing Company obtained that contract. We furnished practically the major portion of that contract. The Walter Manufacturing Company furnished the sub-contract work, which was more or less special with us. It consisted of partitions, beams and odds and ends, which we would be better equipped to manufacture from our plant than in Portland, which would manufacture stock items. The work furnished consisted of wooden fixtures, showcases, wall cabinets, clothing cabinets, suit shelves and all items kindred to the department they were to house. We furnished the material for the [419] major portion of the work.

The bid for the Men's Sports Department was about \$46,000.00. We were about \$10,000.00 low on that average bid. I would say that 90 per cent or thereabouts of the material was furnished by Grand Rapids.

The two other jobs I designed were the Boys' Department on the Fifth Floor and the Men's Depart-

(Testimony of E. G. Hosken.)

ment on the Fourth floor. We bid on those jobs but did not obtain contracts. Our bid on the Boys' Department was \$38,000.00 and the average bid was \$19,000.00. On the Men's Department our bid was \$83,000.00 and the average bid was \$50,000.00. I bid directly from Grand Rapids and submitted my bid to Mr. Williams and Grimes. I had known Mr. Emanuel for several years.

I recall a conversation with him in November, 1937, or thereabouts, I think at Roos Bros. store. We were discussing the store and how nice it looked and then he made a remark to me about the Union situation with us here, and he said, "I was delegated to act as a sort of a go-between to negotiate between the Unions and the Manufacturers;" "do not think we took this wage increase that the Unions demanded laying down, because I had several conversations with them, and I tried to negotiate a better deal." He further said that any agreement on the wage scale, that it was the object of the Union that they would not allow outside manufacturers to come in, and that the Union would not install equipment that came from where the wage scale was lower than the wage scale prevailing in the San Francisco Bay Area. He further stated that applied for molding—other items than mill-work. That is the only time we discussed the situation.

After the Roos Bros. job we secured practically nothing in the San Francisco Bay Area. We had

(Testimony of E. G. Hosken.)

a salesman in the San Francisco Bay Area, Mr. Harry Smith. He doesn't still act for us. His connection was severed about June, 1940. [420]

I met Mr. Ryan once, around July, 1939, it was in Mr. Williams' office, who made the appointment at my request. Mr. Williams, Mr. Ryan, Mr. Smith and myself were present. I asked if there was any change in the situation and Mr. Ryan said there was not. I mentioned to Mr. Ryan I had a job I was figuring on with Weinstein and whether I should spend any more time in trying to get that job. I would not do it if I was going to be handicapped. He told me the situation was just the same, they would not allow the men to install any of our equipment that had a lower wage scale than that which was prevailing in San Francisco. He didn't mention the agreement, all he said was that he would not permit his men to install the finished goods, they needed the work here.

We have had a sales outlet in the San Francisco Bay area through Unit-Built Fixture Company since June, 1940.

Mr. Smith severed his connection with the company at that time.

There were three separate jobs at Roos Bros. to bid on. There were others in addition we did not bid on. They were women's wear, millinery and shoes and the First floor of the Men's furnishings. The other bids were awarded after the Sports Shop contract was awarded. The job was figured completely installed.

(Testimony of E. G. Hosken.)

Cross Examination

By Mr. Faulkner:

The bid of \$46,000.00 on the Men's Sport Department was prepared by figures furnished from Portland, Oregon, and the bid we received from Mr. Jacobi of Walter Manufacturing Company. We submitted the bid. Grand Rapids bid on it in connection with Walter Manufacturing Company. I laid it out in connection with Mr. Williams. That which we bid on was the fulfillment of those designs. I was not paid for that designing. [421]

When I made the design I was only assured by Mr. Roos that, all things being equal, I would be given a portion of the business. I mean conditions being equal. That was the reason for my giving that service.

The job was figured installed and it would be done under local conditions by our own firm if we were successful. We installed our own work in the Men's Sports. In the Sports Shop Walter Manufacturing Company did not install our own equipment, they built the beams and some of the partitions, the stock rooms and all special work we didn't manufacture as a stock item. Grand Rapids actually installed their own work. Walter Manufacturing Company were connected in our work to get the Fourth floor bid, too. On the Fifth floor bid we were, if successful, to do our own work and Walter was responsible for his installation. His portion, however, was cov-

(Testimony of E. G. Hosken?)

ered in our \$38,000.00 bid, and his installation was covered in our \$83,000.00 bid. We were \$33,000.00 high in one instance and \$19,000.00 high in another.

In addition to the work on the Fourth and Fifth floors and the Men's Sport awarded to us, there were three other alterations we did not bid on. They were the Women's Sports Wear, Apparel floor, and the First floor.

I am not familiar with the remodeling of a carriage entrance. The design was done in 1936, the contract for the Men's Sport Shop was let in October, 1936, and fulfilled in 1937.

I cannot give you the name of any individual bidder on the job awarded to us; I was told we were \$10,000.00 lower than any other competitive bid. I never saw a bid \$10,000.00 higher. I only know from information that was furnished me. I wrote the bid out and signed it. Electric fixtures went in with the equipment. We got a very, very small amount of work [422] in this area after the Roos Bros. job.

The major portion of our business is equipment for Ever Ready Shops and Department stores, but we manufacture from the quality of an Austin to a Cadillac. We do manufacture primarily for Ever Wear Shops and Department stores. I have heard that in this particular area a great many of the department stores have their own cabinet shops and do their own work. I know some of the stores do. I don't know whether they all do. I wouldn't say.

(Testimony of E. G. Hosken.)

we are handicapped in competing with the commercial fixture people in this district because customers require a complete job which we are unable to give.

There are many instances where it is not necessary to have sub-contractors. In some instances we have to have sub-contractors if the designs call for sub-contracts. I have been successful to do that on an equality with firms in this district heretofore. I wasn't successful in the Roos Bros. job.

As an aggregate our bids totaling \$167,000.00 and the total bid for the local people on the same work, was \$125,000.00. A \$42,000.00 difference. There is no doubt that is why we didn't get the work.

I am not familiar with the Joseph Magnin job.

I have been with the firm since 1934. My territory is ten states and many times I am not here when the jobs go on.

I don't know anything about the Prussia job in San Francisco.

"Q. Mr. Hosken, there is not any question, is there, that during the period of time that you were representing the Grand Rapids people in Portland, Oregon, and this district that you were consistently being underbid by the local people?

"Mr. Burdell: I object to that.

"The Court: What is the objection?

"Mr. Burdell: I object to the question as immaterial, [423] calling for the opinion and conclusion of the witness.

(Testimony of E. G. Hosken.)

"The Court: Sustained."

Designing service is part of our business. It is likewise part of every person's business in competition with us.

Mr. Emanuel told me that he was elected to negotiate controversy over the wage scale; not elected, but that he assumed that duty. The words he used, as I recall, that the others did not seem to take exact interest, and that he apparently was more interested and he represented the other manufacturers. I believe it was in 1937 he told me that, because I met him in Roos Bros., in fact I met him several times at Roos Bros. I met Mr. Emanuel most every week, because there was a meeting held by Mr. Roos, Mr. Al Williams, Mr. Emanuel, and I believe, a man by the name of Fairweather, and myself. Met once a week and discussed the progress and plans that were being made. I know Mr. Emanuel got the Boys' Department. I don't know what his bid was, the average bid was \$19,000.00.

Redirect Examination

By Mr. Burdell:

The conversation with Mr. Emanuel, as I recall it, was after the job, because I was going through the store and naturally was proud of the department we had done.

Estimates in bids in other parts of the country included designing. That is the way we sold our product in the majority of cases.

H. P. SMITH,

called as a witness in behalf of the plaintiff, was duly sworn, and testified as follows:

Direct Examination

By Mr. Clark: [424]

I am in the fixture business and have been for a number of years, about 1902. I am with Unit-Bilt Store Equipment Company and have been since June 1, 1940. I was with Grand Rapids Store Equipment Company before that, starting in 1916. I was representative, distributor, salesman, in Salt Lake City until 1925, and in San Francisco and Northern California since that time. There was a period, I think 1931 until 1935, that the Company was not operating in this territory. I represented them as a salesman here in 1936.

I had dealings with reference to the contract with Roos Bros. I contacted Mr. Robert Roos regarding their contemplated improvements, and after considerable negotiations and conferences, requested the company in Portland to send down their salesmanager and chief designer, Mr. Hoskens.

Grand Rapids Store Equipment Company presented the bid on the Sports Shop, as I recall, in October of 1936. It was filed with Mr. Williams of Williams & Grimes, architects for the store. The contract was actually signed by Mr. Hosken. After it was awarded I followed through in my usual way. Between the time the contract was awarded and the equipment was installed, something came up with

(Testimony of H. P. Smith.)

reference to its installation. The equipment was installed.

We bid on other work with Roos Bros. but were not successful in that.

While I was salesman in 1938, Mr. McCreedy came here. He was with the company in Grand Rapids, the home office. I arranged a conference between Mr. McCreedy, Mr. Ryan and myself in the Sir Francis Drake Hotel. It was about July of 1938, June or July, in the summer.

Between completion of the Roos job and this conference I had not gotten any other jobs in this area for the Grand Rapids Showcase Company. The meeting took place in the morning, [425] around 9:30, and after a general conversation Mr. McCreedy asked if there was any way in which the trouble that had existed in the past could be ironed out relative to the Union's objection to shipping material into this territory. Mr. Ryan went on to explain that he saw no way in which that condition could be corrected. I cannot recall the exact words, I can only give it in substance.

Mr. Ryan said that around 1934 conditions commenced to pick up in San Francisco, after the so-called depression that had prevailed in the past two or three or four years; that he thought it was a good time to consider the idea of entering into a certain agreement or understanding regarding wage scale pertaining to the millmen and the cabinetmakers of San Francisco, and that he approached the vari-

(Testimony of H. P. Smith.)

ous trades and submitted a proposition, as I recall it, of \$1.12½ an hour wage scale. He said when this was first presented to the millmen and cabinet makers they seriously objected that if they would consent to pay any such wage scale as that, they would be entirely out of the running so far as outside manufacturers were concerned who were operating under a lower wage scale. He stated after a number of weeks of conferences and discussions that finally the various millmen and cabinet manufacturers stated they were willing to concede a reasonable wage scale, provided some way could be worked out that would protect them against outside competition, manufacturers who were operating under a lower wage scale; that after considerable further discussion an understanding or agreement was entered into, I forget just the word he said, whereby the local employers agreed to a wage scale which was satisfactory to the Unions, provided the Unions would protect them on outside competition.

Mr. McCreedy then brought up the question, "Well, Mr. Ryan, don't you realize that that is against the law? It [426] is a restraint of trade?" And Mr. Ryan said, "Yes, we realize that fact, but nevertheless we are going to proceed along these same lines until such time as the Government stops us."

Finally Mr. McCreedy said to Mr. Ryan, "Well, I will be willing to enter into an agreement with you fellows whereby our company will agree on any

(Testimony of H. P. Smith.)

equipment sold and shipped into the Bay Area, we will agree to manufacture it under the same prevailing wage scale as exists in San Francisco at the time the equipment is shipped." Mr. Ryan said, "No, I could not enter into an agreement of that sort." Mr. McCreedy said, "Why, the only trouble seems to be you are objecting to our operating up in Portland under a lower wage scale than prevails here; I do not see why you should object if we manufacture our equipment and ship it into this territory under the same prevailing wage scale, it seems to me that would eliminate your objection." Mr. Ryan said, "No, I could not consider that", or "We could not consider it." He said, "In the first place, we would never be able to convince the manufacturers here in San Francisco that such an agreement actually existed." Mr. McCreedy said, "Well, the Unions have a right to come into our factory and inspect our books, inspect our records, and so on, and they have access to all of our records pertaining to the employment of the various crafts in our organization, and it would seem to me that you could easily find out that we are carrying out the letter and agreement of our contract through your organization in Portland." Mr. Ryan said, "No, I do not think that would work, because, as I said, as a matter of fact the local manufacturers here in San Francisco do not trust us any more than we could throw our hats," and he said, "It is more or less the same with us, we do not trust them any further than we can throw our hats, so that agreement would never work."

(Testimony of H. P. Smith.)

As I recall the conversation terminated about noon time. Mr. McCreedy asked Mr. Ryan if he would not go to lunch with us, and he begged to be excused, saying he had been ill for some time and was on a very strict diet. As I recall the [427] appointment was for 9:30 in the morning.

I continued my connection with Grand Rapids Company after that date. We got no more jobs in the Bay Area, except some little odds and ends, small jobs, but nothing of any importance. I spent a good portion of my time outside this particular Bay Area in other parts of the territory until 1940, when the company decided to appoint a licensee in Northern California, and I left the employment of Grand Rapids Store Equipment Company and went with Unit-Built Store Equipment Company, who were appointed licensees. I worked for Grand Rapids Company for a commission. I have worked for Unit-Built Fixture since June, 1940, whom I understand is a member of the Institute.

Cross-Examination

By Mr. Routzohn:

This conversation occurred in June or July, 1938, at the Sir Francis Drake Hotel. Mr. Williams was not present. Mr. McCreedy was present all the time during the conversation. He did not leave the room at any time so that he overheard everything that was said by Mr. Ryan that I testified to here. I don't know our wage scale in Portland in 1938, that was

(Testimony of H. P. Smith.)

not discussed at that time. It was not discussed that our wage scale was 50 cents an hour in 1936. Mr. McCreedy agreed to enter into an agreement whereby he would pay the same wage scale that prevailed in San Francisco on any equipment shipped into San Francisco. He made that proposition. I did not know there was a written agreement with the employers as far back as 1936. All that was discussed was the fact that Mr. Ryan said they had entered into an agreement or understanding. As I remember Mr. McCreedy asked him if that agreement or understanding was in writing and Mr. Ryan said, "Why, no, it was not in writing, you do not think we are crazy, do you?" [428]

Mr. Ryan did not state, "Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer and nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government or that of any interstate common carrier or any regulation of the Federal Trades Commission or of the Sherman Anti-Trust Law."

Cross-Examination

By Mr. Faulkner:

I did not say Mr. Ryan told us that in 1934 an agreement had been entered into. He didn't say anything about 1934 in that conversation. He did say that business had been very poor and had started to get better in 1934. He mentioned the year 1934, I said

(Testimony of H. P. Smith.)

approximately 1934, I don't remember whether 1933 or 1934. Mr. Ryan stated that over a period of 1932, as I remember, up to 1934, conditions in San Francisco had been quite poor and they began to pick up in 1934, and then it was he thought about negotiating for a new wage scale.

I didn't state to \$1.12 $\frac{1}{2}$. I said, as I remember it, it was \$1.12 $\frac{1}{2}$. My recollection as to the conversation in 1938, is that he said \$1.12 $\frac{1}{2}$. I didn't understand when he made the demand. He didn't specify any definite date when the demand for \$1.12 $\frac{1}{2}$ was made. I didn't know that when we were talking to Mr. Ryan in July of 1938, that was when the demand was made to get \$1.12 $\frac{1}{2}$ an hour. He didn't tell me that.

Mr. Ryan stated that he had a number of conferences with the various manufacturers regarding the so-called new wage scale, and after a number of weeks of conferences and discussions, the local manufacturers agreed to this wage scale, provided they could have some protection from outside competition of Manufacturers operating under a lower wage scale. [429]

I came back with Grand Rapids in June of 1935. I had been with them since 1916. I did not know at the time I went to Grand Rapids in 1916 that the Unions in this vicinity would not work upon material that had been worked on outside of this community on a different wage scale than that existing here. I came to San Francisco as branch manager

(Testimony of H. P. Smith.)

for the company in 1925. I acted in that capacity until 1931. In that period I learned our fixtures were installed by Union carpenters. I never paid any attention whether the goods I was handling were union or non-union. Mechanics here in San Francisco set them up and installed them. I wouldn't term them carpenters, I would call them cabinet makers.

In the meeting with Mr. Ryan I took no notes of the conversation. I would say it lasted from two to two and one-half hours. When it was concluded Mr. McCreedy invited Mr. Ryan to lunch.

The expression, "trouble could be ironed out" was not used by Mr. McCreedy that I recall. I didn't have the conversation with Mr. Ryan, Mr. McCreedy did. It was not used by Mr. Ryan that I recall. I don't recall making the statement that the expression "trouble ironed out" was used by Mr. McCreedy or Mr. Ryan.

I am employed by Unit-Built Company, one of the defendants in the case. Mr. Roselyn is the head of that company and handled the Grand Rapids line under a license. His directions to me are to press Grand Rapids equipment in the sales.

Q. "And in connection with those sales, you are unable to compete against local commercial fixture competition in this district; isn't that true?"

"Mr. Clark: I object to that as incompetent, irrelevant and immaterial. [430]

"The Court: Sustained.

"Mr. Faulkner: Q. In connection with the

(Testimony of H. P. Smith.)

work that you do for the Unit-Bilt people you bid, do you not, upon Grand Rapids articles?

"A. We have to quote prices.

"Q. You also quote prices on the same jobs for the Unit-Bilt people, don't you?

"A. That is true.

"Q. Which is the lower?

"Mr. Clark: Your Honor, we object to that—

"The Court: I don't see the materiality of it. Objection sustained.

"Mr. Faulkner: Well, we offer to prove, your Honor, that the prices of the Unit-Bilt fixtures are constantly lower.

"Mr. Clark: Just a moment. I object to Mr. Faulkner stating what he offers to prove in the presence of the jury.

"The Court: You may proceed.

"Mr. Faulkner: We offer to prove by this testimony that the prices of the Unit-Bilt Company to the same customers where their prices are quoted and the Grand Rapids' are quoted, that the Unit-Bilt prices are constantly lower even when their instruction is to sell Grand Rapids goods.

"The Court: Let the ruling stand."

Thereupon documents marked for identification "Exhibit 35-10" and produced by the United Brotherhood under subpoena comprising correspondence between the First General Vice-President of the United Brotherhood and Mr. D. H. Ryan, with certain attachments to the letters, were introduced

in evidence as "Exhibit 35-10" and the following was read to the jury:

"Mr. Howland: If the Court please, I am not going to read all of these documents. A part of this file marked Exhibit 35-10 is an original letter on the letterhead of Millmen's Local Union No. 550 and addressed to Mr. M. A. Hutcheson, First General Vice-President, Carpenters Building, Indianapolis, Indiana, dated [431] June 1, 1939, and reads as follows:

"Dear Sir and Brother:

"In reply to yours of May 26, 1939, you will find enclosed the required agreement. We are meeting again next Monday with mill owners on a six-county setup and enclosed agreements are signed with the understanding the final setup will apply in all cases.

"An oversight in not sending them in.

Sincerely and fraternally,

W. C. O'LEARY

for D. A. RYAN

"P. S. Brother Ryan requests that I forward the agreement as per your letter to him of 5-26-39.

W. C. O'L."

"Attached to that letter are two of the contract forms heretofore introduced in evidence as being the contract of June 15, 1938. The first of these attached contracts begins as follows:

"Agreement. For the purpose of promoting the mutual interests of the parties signatory hereto, it is agreed between Commercial Fixture and Cabinet

Company and the Bay Counties District Council of Carpenters, as follows:

"The wages, hours and working conditions of the cabinet makers, carpenters and millmen employed by the James P. La Barbe (Commercial Fixture and Cabinet Company) will be as stipulated in the agreement between the District Council of Carpenters, Millmen's Unions Nos. 42 and 550, and the Lumber Products Association, Inc., and the Cabinet Manufacturers Institute, Inc., Northern Division, which is as follows: —then this document cites in full the contract between the labor organization and the Cabinet Manufacturers Institute, which is already in evidence.

"I invite the attention of the Court and the jury to the fact that paragraph 2 of this quoted agreement has been exed out in [432] pen and ink and in the margin appears the word "Out".

"The Court: You referred to that heretofore, did you not?

"Mr. Howland: Yes.

"Mr. Tuttle: It shows up in another duplicate now with the paragraph 2, which was the arbitration award phase, as exed out.

"The Court: Yes.

"Mr. Howland: This agreement at its conclusion is signed in pen and ink, "Commercial Fiktur and Cabinet Company, James P. LaBarbe," and it is dated 5-19-39.

"I also invite the attention of the Court and the jury to the fact that paragraphs Nos. 17 and 18 in

this paper are unimpaired by any defacement whatsoever and are not marked out as is paragraph 2. I will also say that paragraphs 17 and 18 are identical with the paragraphs as appear in the contracts heretofore introduced and simply contain that clause which we have read before that it is agreed that no materials will be purchased from and no work will be done on any materials, and so forth.

“Also attached to this same letter is a similar document; the only difference in it is that at the top it says between the labor organization and the Hager Sash and Door Company, Berkeley, California, and on this document likewise paragraph 2 has been exed out in pen and ink with the word “Out” written in the margin, but paragraphs 17 and 18 are unimpaired. This is signed by E. William Burgett as representing Hager Sash and Door Company, signed in pen and ink, and also signed in pen and ink by D. H. Ryan by W. C. O’Leary, and it is dated 5-16-39.

“Attached to this file by way of reply to this letter of Mr. O’Leary is a carbon copy of a letter addressed to Mr. O’Leary dated June 5, 1939, which reads as follows:

“ ‘June 5, 1939.

“ ‘Mr. W. C. O’Leary, B. A.,
Local Union No. 550,
640 6th St.,
Oakland, Calif. [433]

“ ‘Dear Sir and Brother:—

“ ‘Yours of June 1st enclosing copy of agreements entered into with the:—

"Commercial Fixture & Cabinet Co., Oakland, Calif.

Hager Sash & Door Co., Berkeley, Calif.

has been received at this office, and their applications for the use of our label are now acceptable.

"Stamps for their products have been ordered made up. As soon as completed they will be shipped to you.

Yours fraternally,

~~—~~ FIRST GENERAL VICE
PRESIDENT.' "

"And also in the file is a carbon copy of a letter dated June 7, 1939, addressed to Mr. O'Leary, which reads as follows:

"June 7, 1939.

"Mr. W. C. O'Leary, B. A.,
Local Union No. 550,
640 60th St.,
Oakland, Calif.

"Dear Sir and Brother:—

"As per my letter of June 5th I have made up and forwarded to your address Two (2) rubber stamps of our Label for use upon the products of the concerns you recently made application for. These Stamps are to be placed as follows, as that is the way they have been registered at this office:—

Stamp No. 191—Commercial Fixture & Cabinet Co. Oakland.

Stamp No. 192—Hager Sash & Door Co., Berkeley, Calif.

"If at any time in the future any firm in your

district using our label on their products should suspend business or be deprived of the use of our label for any reason be sure to notify this office immediately.

“Copies of all future agreements entered into with the above mentioned firms must be sent this office immediately after being signed up.

Yours fraternally, [434]

“FIRST GENERAL VICE
PRESIDENT.”

“Mr. Tuttle: Your Honor please, before leaving the correspondence with the United Brotherhood, there are one or two things in that file I would like to put in evidence and perhaps while everybody's memory is fresh about it, it would be a suitable time for me to do so now.

“The Court: If you wish to do so, you may.

“Mr. Howland: The only part of that which I offered in evidence are the documents marked 35-10.

“Mr. Tuttle: Well, I am taking 35-10.

“In the first place, your Honor, when Mr. Howland called attention to the enclosed agreement and paragraph 2 exed out and the word “Out” he then summarized as to paragraph 17, the first sentence, and I wish to call your Honor's attention and the jury's attention on the record to the fact that that paragraph 17 also contains these words—

“The Court Read the entire paragraph.

“Mr. Tuttle: In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done

on any material or article that has had any operation performed on same by Saw Mills, Mill or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement. The purchase, working and sales of the following products is excepted:—then follows a list which has been read a number of times. Then follows these two sentences: ‘Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any Buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws.’” [435]

“Now, attached to the letter of Mr. Ryan to Mr. M. A. Hutcheson dated June 1, 1939, which was read, is a printed form, your Honor, entitled ‘Application for the Union Label,’ and inasmuch as this correspondence and other correspondence from this same, or associated file, constantly refers to the receipt by the head office in Indianapolis of an application from the mill owner for the union label, I would like to put in just as to the stamp and this one-printed form because it is referred to in the letter which Mr. Howland read to the jury.

“Mr. Howland: The whole file is in evidence.

“Mr. Tuttle: Then I would like to read this formal application to the jury. This, as your Honor and ladies and gentlemen of the jury, you will see, is a pink form. It is entitled “Application for the

Union Label." Then these are the printed questions with blanks after them for the answer:

"What is the name of the firm upon whose products this label is to be used?" Then a line for the address, street or post office box number, the town and state.

"What do they manufacture?"

"How many men do they employ?"

"How many journeymen of the Brotherhood do they employ?"

"How many apprentices of the Brotherhood do they employ?"

"Do they employ any women? If so, how many? Do they employ any children? If so, how many? If the above firm employs women or children, state fully what they do.

"What is the maximum hours per day worked?"

"What is the maximum hours per week worked?"

"What is the minimum rate of wages per hour?"

"Are any of their products shipped? If so, to what sections are they shipped?"

"Then there is a place for the signature of the secretary and the president of the party making the application." [436]

Thereupon Minutes of Millmen's Local Union No. 262, Exhibit No. 118-12 for identification were introduced as "U. S. Exhibit No. 118-12" and the following read:

"Mr. Howland: From the minutes of the meeting of Millmen's Union No. 262 of November 7, 1938, the following appears:

• Brother Cambiano U B organizer reports on conditions of the new agreements, also that there would be a meeting of the millmen Tuesday, November 8 and a meeting of the mill owners Wednesday, November 9 in San Francisco, asking that a committee of three be appointed to meet with them. Moved, seconded and carried that a committee of three be appointed to meet with the Conference Committee in San Francisco, including the Pres. Committee brothers Smoot, Cloud and Barnes.'

“From the minutes of the meeting of October 24, 1938:

• Brother J. Cambiano U B organizer gave an explanation of the new mill agreement. Agent Blanchfield read the new agreement as submitted to the mill owners. Moved, seconded and carried that the new agreement be adopted as read.'

“Minutes of the meeting of October 3, 1938:

• Organizer Cambiano reports on the mill situation.'

“From the minutes of the meeting of September 26, 1938:

• The committee to the conference meeting reported on the meeting. Brother Cambiano general organizer reports on the mill situation in San Francisco. Moved, seconded and carried that the Pres. be empowered to go at any time to meetings with his committee at the expense of the union.'

“From the minutes of the meeting of February 6, 1939:

• Brother Cambiano present and reports on the mill situation and asks that a committee be appoint-

ed to meet in San Francisco with the mill owners. Committee brothers Bergstrom, Graff, Wal Wilzack and Smoot.'

Thereupon minutes of Joint Millmen's Committee of [437] Locals 42, 262, 550 and 1956, being Exhibit 124 for identification, were introduced in evidence as follows:

"Mr. Howland: From the exhibit marked for identification 124-28, the minutes of the meeting of April 8, 1939, the following appears:

'Joint Millmen's Committee of Locals 42, 262, 550, and 1956, convened at 12:00 noon, Chairman Harvey Miller presiding.

'Brother Smoot: Get the \$8.50 now. Then get unified in our efforts and go for a \$9 agreement over a period of two years beginning in 1940. Go out and get the carpenters' support. A 75-cent-an-hour door shipped in here with the label is the same as a 75-cent union man working and making it in this district.

"(The minutes were marked "U. S. Exhibit 124-28" in evidence.)

"Mr. Howland: And from the exhibit marked 124-42, Minutes of the meeting of the Conference Committee of the same unions dated November 26, 1938, the following appears:

'Moved by Brother Irish and seconded by Westby that Brother Ryan be requested to call a meeting of representatives of employers and their associations in the Bay Counties district for the purpose of getting a uniform agreement signed as soon as possible. (Carried.)'

“(The minutes were marked “U. S. Exhibit 124-42” in evidence.)

“Mr. Howland: And from the exhibit marked 124-41, minutes of the meeting of December 3, 1938, the following appears:

:Brother Ryan told of calling a meeting of Joint Conference Committee. San Mateo was represented by Mr. McMeown, San Francisco by Mr. Ennes, Gaetjen, and Warden, Mr. D. N. Edwards, of Alameda County. If the scope was six counties they would be bound to arbitrate, if not six counties the arbitration clause would not be binding.

•Ennes insists paragraph No. 2 go in. [438]

•Ryan reported Brother Cambiano phoned some orders from General President Hutcheson to the effect that the San Francisco agreement must not contain quotations from the Arbitration Board and paragraph No. 2 must be eliminated.

“(The minutes were marked “U. S. Exhibit 124-41,” in evidence.)

“Mr. Howland: From the minutes of the same Conference Committee marked 124-47, the meeting of October 15, 1938, the following appears:

•Brother Wilcox told of the check-up made on the compromise offer of \$8.50. Stated Brothers Cambiano, Kelly, O'Leary and himself visited, first; D. N. Edwards of the East Bay Mill Owners. O. K. on \$8.50 and six counties. Tried to include 2-3 and 4 panel, slab and hollow cored doors. No consideration on added doors. Second, picked up Jack Peirson, of Redwood Manufacturers Co., Pittsburg, at Hotel

Oakland—O. K. on \$8.50 and six counties but will have to get approval of Casper Wood. Third, to San Jose, picked up Secretary and Business Agent Blanchfield, of Santa Clara County District Council, and proceeded to the P. M. Co. and met the manager, Mr. Pierce. Six county set-up at \$8.50 O. K. Will sign up in the morning and manufacture everything. Then to San Francisco that same evening and met Harry Gaetjen, of San Francisco Mill Owners, and Mr. Ennes, of Cabinet Manufacturers' Association, Northern Division, O. K. on \$8.50 for six counties, men now getting \$9.00.

'We should strive to have S 4 S. and everything made here. Protect the mill owners and go for the other 50 cents.'

"(The minutes were marked "U. S. Exhibit 124-47" in evidence.)"

Thereupon original copies of August 10, 1939 contract was substituted for photostat, marked Exhibit No. 69 for identification and was introduced in evidence as "U. S. Exhibit No. 69."

Thereupon, identical contract except that Lumber [439] Products Association, Inc. by H. W. Gaetjen is the signatory instead of Cabinet Manufacturers, was introduced in evidence as "U. S. Exhibit No. 172."

Thereupon the 1939 contract was read to the jury by Mr. Faulkner as follows:

**EMPLOYER-EMPLOYEE AGREEMENT
WAGES, HOURS, AND WORKING
CONDITIONS**

RE: MILL AND CABINET WORK.

1. This Agreement is a negotiated Agreement entered into in good faith by all parties who are signatories hereto and who stipulate that they have full authority to bind their organizations to the terms hereof.
2. During the terms of this Agreement the minimum wage scale of Journeymen Cabinet Makers, Bench Hand and Millmen employed on bench work and the operation of wood working machinery will be One Dollar (\$1.06-1/4) Six and One Quarter Cents per hour, except in the manufacture of stock sash and doors, in the manufacturing of which the minimum wage scale of Ninety-six and One Quarter (\$.96-1/4) Cents per hour will apply.
3. Eight (8) hours shall constitute a regular work day. The regular work day shall be between 8:00 a. m. and 5:00 p.m., five (5) days shall constitute a regular work week from Monday to Friday inclusive.
4. The rate of wage for overtime work shall be as follows: For the first four (4) hours after the first eight (8) hours time and one-half. All overtime thereafter at double time. Work on Saturdays, Sundays, and Holidays herein enumerated from twelve (12) midnight of the preceding day at double time.
5. Recognized holidays are New Years' Day,

Decoration Day, Fourth of July, Labor Day, Admission Day, Thanksgiving Day and Christmas.

'6. When two (2) shifts are worked in any twenty-four (24) hour period, straight time shall be paid. When three (3) shifts [440] are worked, eight (8) hours shall be paid for seven (7) hours work.

'7. There shall be no limitation of the Employer as to whom he shall employ or discharge, excepting that any working Foreman, working Superintendent, Journeyman Millman or Cabinet Maker employed, shall either be a member or shall within thirty (30) days after his employment become a member of the Millmen's or Carpenters' Union. Any apprentice employed shall either be a member or within two (2) months after his employment become a member of either of said Unions.

'8. An apprentice shall not be less than eighteen (18) years of age and not over twenty-two (22) years of age when starting his apprenticeship. He shall undergo a course of shop training for four (4) years and shall attend such Trade School as is jointly approved by the Trade Association and Union Signatories having local jurisdiction.

'9. An apprentice who has failed to establish an accumulative attendance of eighty (80%) per cent. shall not at the option of the employer be entitled to the schedule rate until such deficiency in attendance has been remedied.

'10. The apprentice shall be given two (2) examinations per year by a joint examining board

composed of equal representation from the Union and the Trade Association Signatories hereto.

'11. The employment of apprentices shall not exceed one (1) apprentice to every four (4) or major fraction thereof—Journeymen, Millmen, and Cabinet Makers combined. Handicapped workers shall not be included in this computation.

'12. It shall not be a contractual obligation, but it shall be the policy of employers, parties to this Agreement, to employ apprentices who might have been laid off due to lack of work before employing new apprentices.

'13. Effective August 1, 1939, the minimum rate of wage [441] shall be the percentages of the Journeymen's minimum rate of wage as follows:

1st year—

1st 3 months 30%—\$2.55

2nd 3 months 35%— 2.97

3rd 3 months 40%— 3.40

4th 3 months 45%— 3.82

2nd year—

1st 6 months 50%— 4.25

2nd 6 months 60%— 5.10

3rd year—

1st 6 months 65%— 5.52

2nd 6 months 70%— 5.95

4th year—

1st 6 months 80%— 6.80

2nd 6 months 90%— 7.65

'14. A person who is incapacitated by age, physical or mental handicaps or other infirmities, may

be employed at an hourly rate of wage below the minimum established in this agreement, provided he shall first have obtained a written dispensation from his Union.

'15. A person having temporary disabilities may be employed at an hourly rate of wage below the minimum established by this Agreement, provided he shall first have obtained a written dispensation from his Union.

'16. Millwright work consisting of installing equipment and maintenance of equipment, may be done at the convenience of the Employer. The rate of wage for such work shall be the regular rate of wage of Journeymen, Millmen employed on production work, except that the rate of wage shall be straight time without regard to period or length of time employed on such millwright work, or the day. This paragraph is not applicable to grinding, changing knives, saw filing or setting up of machine tools.

'17. The Shop Steward shall make himself known to the Employer.

'18. The following rules (Paragraphs Nos. 19, 20 and 21) of the U. B. of C. and J. of American locals are hereby specifically recognized.

'19. No member of the U. B. of C. and J. of America locals shall work in any cabinet shop, planing mill or elsewhere; in the City and County of San Francisco, or in the counties of Alameda, Contra Costa, Marin, San Mateo, or Santa Clara, in the capacity of a millman or cabinet maker, unless the planing mill or cabinet shop in which he is working is entitled to use the Union Label.'

Can we agree what that "U. B. of C. and J." means so that it will be intelligible to the Jury?

"Mr. Howland: United Brotherhood of Carpenters and Joiners of America.

"Mr. Faulkner: Then so that this will be intelligible these initials, "U. B. of C. and J." means United Brotherhood of Carpenters and Joiners of America.

'20. No member of the U. B. of C. & J. of America Millmen's locals shall work in any cabinet shop or mill in the six counties herein mentioned where more than one employer, i.e., one having a direct interest in the business, excepting employers members of the U. B. of C. & J. of America who work with the tools of the trade. When an employer (non-member of the U. B. of C. & J. of America) works with the tools of the trade his work shall be limited to the regular working day of eight (8) hours which shall be between 8:00 a.m., and 5:00 p.m. For each union member of the firm that works overtime, or on holidays, there shall work during the same period one (1) union employee not a member of the firm.

'21. When any cabinet maker, bench hand or millman performs work at the building site, the minimum scale of wages and other conditions shall conform to the carpenters' scale of wages and other conditions as established by a collective bargaining agreement between a recognized Employers' organization and the United Brotherhood of Carpenters and Joiners of America. Under any circumstances, the minimum scale paid for [443] such outside work shall not be less than the minimum shop scale.

'22. Business agents of the Millmen's Union shall have access to all shops during working hours at their own risk.

'23. It is hereby agreed and understood that in granting the use of the Label of the United Brotherhood of Carpenters and Joiners of America under this Agreement that the Label shall remain at all times the property of the U. B. of C. and J. of America, and may be recalled at any time when it is being used to the disadvantage of the Organization (U. B. of C. & J. of A.). The recall of the Label shall be prima-facie evidence of the cancellation of this Agreement with respect to the Shop from which the Label is withdrawn.

'24. During the term of this Agreement there shall be a Six County Joint Advisory Committee composed of equal voting representatives from Employers and organized Employees from the counties of San Francisco, Alameda, Santa Clara, San Mateo, Marin, and Contra Costa and an International Officer representing the United Brotherhood of Carpenters and Joiners of America.

'25. The Advisory Committee shall elect a Chairman, Vice-Chairman and Secretary from the committee and said *offers* shall be entitled to voice and vote.

'26. There shall be no limitation as to the number of Conferees provided they are parties to a Millmen's Collective Bargaining Agreement and operating mill or cabinet shop within the six (6) counties herein mentioned.

'27. The number of votes shall be limited to sixteen, equally divided between the Employer and Employee representatives.

'28. A quorum for business shall consist of there being present in person, Employer and Employee representatives from five (5) counties. The employer and employees representatives need not be from the same five counties.

'29. Conclusion of the Advisory Committee when effecting [444] changes in the Contract shall be unanimous; to become effective for such unanimous decision, Employer and Employee representatives shall be present from the six counties.

'30. The advisory Committee shall lend its good offices to adjust disputes and grievances that may arise and may interpret and make such rules and regulations as may be necessary to give force and effect to the intent, purpose and meaning of the agreement. They shall be empowered to have access to all records pertaining to any case when a violation of this Agreement is involved.

'31. The Chairman at the request of any member of the Advisory Committee and at such reasonable time as is set by that member shall call a meeting of the Committee.

'32. The respective Employers and Employees of the six (6) counties shall each designate a local Employer and Employee Joint Committee. The Local Employer and Employee Joint Committee shall function in matters of local interest.

'33. The Union shall advise the Local Employer

and Employee Joint Committee of all Union stamps or labels it proposes to issue prior to issuing same.

'34. This Agreement shall remain in effect for a period from May 1, 1939, to May 1, 1940, and shall continue to remain in full force and effect thereafter provided it shall be subject to change, modification or termination after May 1st of any year by either Party (employer or employee) upon notice being served in writing by either Party upon the other Party between the period of January 1st and February 1st of any year.

'35. In the event of either Party having exercised its rights under paragraph 34 by having served notice of desire to change or modify contract and such changes or modifications not having been mutually agreed upon on or before March 16th, then at the request of either Party, an Arbitration Board shall be selected and unsettled matters shall be submitted to the Board. [445] The award of the Arbitration Board shall be final and binding upon all Parties to Labor Agreements with respect to Mill and Cabinet Maker Members of the American Federation of Labor in the Counties of—San Francisco, Alameda, Contra Costa, Marin, San Mateo, and Santa Clara.

'36. It shall be the function of the Joint Advisory Committee to select the Arbitration Board. The Arbitration Board shall be composed of five (5) members; a neutral arbitrator; an arbitrator representing the employers; an arbitrator representing the employees; a technical advisor representing the employers; and a technical advisor representing the employees.

'37. The award of the Arbitration Board shall be arrived at by a majority vote. The technical advisors shall have no vote. In the selecting of the neutral arbitrator who shall be the chairman, a caucus of the employers representatives and employees respectively on the Joint Advisory Board shall present lists of five (5) names. When the same name appears upon any of the lists submitted by the employers and any of the lists submitted by the employees that Party shall be the neutral arbitrator upon his acceptance of the office.

'38. In the event of failure of acceptance of office, the process shall be continued until the office is filled.

'39. There shall be no restriction placed upon either party by the other in the selection of their own Members of the Board.

'40. The fees and expenses of the neutral arbitrator shall be borne one-half by the employers, and one-half by the employees.

'41. Subject matter presented to the Arbitration Board shall be in the form of written briefs; oral argument may be presented to the Board upon the Board's request. Written briefs may be presented by, or oral argument requested of, any employer or employee, or their respective representatives provided they are [446] parties to a mill or cabinet shop collective bargaining agreement in the six (6) counties herein mentioned.

'42. In entering into a six (6) county Arbitration Agreement it is recognized that the Redwood

Manufacturers Company have justifiably included in their present Agreement dated November 1, 1938, a clause which runs as follows:

'43. "It is understood between the Company and the Union that this section is being included with the complete understanding that in this, and further agreements, wage rates of the Redwood Manufacturers Company must be competitive with competing manufacturers whose plants are located outside the six (6) counties involved in this Agreement. In general, such competition is as listed in Section No. 20."

'44. The signature of the International Officer of the United Brotherhood of Carpenters and Joiners of America affixed hereto signify the approval of this contract by the International and further binds the International to approve only such mill and cabinet employer and employee Agreements entered into in the six (6) counties herein mentioned as are uniform with respect to rates of wages, hours, and working conditions throughout the six (6) counties.

UNITED BROTHERHOOD OF
CARPENTERS AND JOIN-
ERS OF AMERICA MILL-
MEN'S UNION No. 550

C. H. IRISH

W. C. O'LEARY

Witnessed by

J. F. CAMBIANO.

J. F. Cambiano—Gen'l. Rep-
resentative, witness

UNITED BROTHERHOOD OF
CARPENTERS AND JOIN-
ERS OF AMERICA MILL-
MEN'S UNION No. 42

CHAS. HELBING

R. H. MILLER

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS

D. H. RYAN

D. H. Ryan,

Secretary-Treasurer

COMMERCIAL FIXTURE &
STORE FRONT INST.

J. E. ENNES, Mgr.

“ ‘Dated: Aug. 10, 1939, San Francisco, Califor-
nia.’ ” [447]

“Mr. Faulkner: I will stipulate, Mr. Howland,
that Exhibit 172, the agreement, is identical with the
one just read except that the counterpart is signed
by the Lumber Products Association.

“Mr. Howland: It is signed by the Lumber Prod-
ucts Association, Inc., H. W. Gaetjen, and the sig-
natory parties on behalf of Local Union 42 include
an additional name, that is W. L. Wilcox. Other-
wise they are the same.”

* * *

“Mr. Tuttle: May I inquire through you whether
I have Mr. Howland's stipulation that from the time
when these contracts came into being in 1939, and
the contracts forwarded to the Indianapolis office,

to Mr. M. A. Hutcheson, First Vice-President, in connection with the application for labels, they were in the form just read to the jury, that is here in the files. I do not want to put in all of the files.

"Mr. Howland: Yes, I have been through these files and I find the records reflect that is the case."

Thereupon By-Laws and Trade Rules of Local 42, Exhibit No. 1 for identification, was introduced in evidence in its entirety as "U. S. Exhibit No. 1".

"I will not read them at this time, other than the concluding section, Section 43, which reads as follows:

"All cases not governed by these By-Laws will be governed by the Constitution and Laws of the U. B. of C. J. of A., and by-laws and Trade Rules of the Bay Counties District Council of Carpenters.' "

Thereupon Exhibit 61-44. for identification, from files of Mangrum, Holbrook & Elkus, was introduced in evidence and was read as follows:

"Mr. Howland: This letter marked Exhibit 61-44 is on the letterhead of Bay Counties District Council of Carpenters and dated January 31, 1940, addressed to Mangrum, Holbrook & Elkus; [448] the text of this letter and the signature is mimeographed, the address being typewritten onto it, and the text of the letter is as follows:

"Our present agreement with you covering hours, wages and working conditions of the cabinet makers and millmen in your employ stipulates (see paragraph thirty-four) that either party to the agree-

ment may, by serving notice in writing upon the other party, enter into discussions regarding any proposed changes *that* or modifications in the agreement to be effective May 1, 1940. This is to officially notify you that the Bay Counties District Council of Carpenters and the Millmen's Unions affiliated therewith desire to discuss with you or your representatives, and if possible negotiate, certain changes in our agreement.

"We would appreciate it if you would notify us what time and place would be convenient to you to meet with our representatives to discuss this matter.

"With best wishes, we remain,

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS,

D. H. RYAN,

Secretary.'"

The letter contains a pencil notation: "Gene will ring Innes on this and let me know what he says", initialed R.J.E. (Richard Elkus). Pencil mark reads over to another pencil notation, "Nothing to do, routine notice."

Thereupon Exhibit 61-48, for identification, was introduced in evidence, being letter on letterhead of Bay Counties District Council of Carpenters, dated April 11, 1938, addressed to J. C. Ennes, Secretary-Cabinet Manufacturers Institute of California, Northern Division, Mr. F. S. Spencer, Chairman.

- Lumber Products Association of San Francisco, Mr. D. N. Edwards, Chairman, East Bay Mill Owners Association, reading as follows: [449]

“The agreement now in effect between your three associations and the Bay Counties District Council of Carpenters Millmen’s Local Union 42 of San Francisco and Millmen’s Local Union 550 of Alameda County, stipulates (paragraph 24) ‘it shall be subject to change, modification, or termination by either party (after June 15, 1938). upon 60 days notice being served in writing upon the other party.’”

“In accordance with the provision we have quoted, you are hereby officially notified that the Bay Counties District Council of Carpenters, acting both for the District Council of Carpenters and for Millmen’s Unions 42 and 550, all signatories to the agreement, that it is our desire and request that certain changes be made in our agreement.

“We are making our request at this time so that we may have ample time to arrive at a mutually satisfactory adjustment of the present agreement before June 15, 1938.

“May we respectfully suggest, in order to promote the establishment of conditions of employment in Santa Clara County and Contra Costa County identical to the conditions that may be established in the San Francisco Bay Counties, that you invite representatives of the employers in these two adjacent counties to participate in the conferences in the establishment of our new agreements. We

are referring specifically to the Pacific Manufacturing Company of Santa Clara County and the Redwood Manufacturers Company of Pittsburg.

"We ask that our representatives be afforded an opportunity to meet with representatives of your organizations at your earliest convenience.

Sincerely yours,

**BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS**

D. H. RYAN,

Secretary." [450]

Thereupon "U. S. Exhibits Nos. 173 and 174" were introduced in evidence with the stipulation that Mr. Ryan, Secretary of Bay Counties District Council of Carpenters signed them and that they were circulars.

"Mr. Howland: The letter marked Exhibit 173 contains a mimeographed text on the letterhead of the Bay Counties District Council of Carpenters dated October 16, 1937, and it is addressed:

'To the Planing Mill Owners
and Cabinet Manufacturers
in the Bay Area.

'Greeting:

'The Employer-Employees Labor Conference Committee, at its last meeting, defined the meaning and intent of the terms "Flooring", also 'T & G' in Paragraph 16 of the Agreement of September 21, 1936, as follows:

'By Unanimous vote, 'Flooring' was defined as:
1" x 3", 1" x 4", 1" x 6", 1 1/4" x 4".

'T & G' was defined as of the following materials and dimensions:

Fir—

T & G V, also

T & G V and C B

Redwood—

T & G V 1 S, also

T & G Bead 1 S

$\frac{3}{8}$ " x 4" & 6"

$\frac{5}{8}$ " x 4" & 6"

$\frac{3}{4}$ " x 4" & 6"

'We take this opportunity to thank you for your cooperation in the past and are confident we can depend upon your cooperation in the definitions above referred to.'

BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS

D. H. RYAN,
Secretary".

"Mr. Howland: The other one is also a mimeographed letter on the letterhead of the Bay Counties District Council of [451] Carpenters dated June 21, 1937. It is addressed to:

"To All Planing Mills
and Lumber Dealers in
Alameda County.

'Gentlemen:

'This letter is being addressed to the planing mills and lumber dealers in Alameda County, for the reason that there is being brought into Alameda County

doors, sash and trim that should be made in the San Francisco Bay District, in accordance with the terms of our existing agreement with the East Bay Planing mill owners and other firms in Alameda County.

'This letter is to officially notify you that on and after July 1, 1937, the terms and stipulations of our agreement will be strictly adhered to and enforced in Alameda County.

'Assuring you that we will greatly appreciate your cooperation, we remain

Sincerely yours,

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS

D. H. RYAN,

Secretary.' "

Thereupon document was introduced and marked "U. S. Exhibit No. 83", being copy of the 1939 contract referred to in the testimony of Mr. Miller, who produced documents in behalf of Mullen Manufacturing Company.

Thereupon portion of Exhibit 63-8 was introduced as follows:

"Mr. Howland: This document is marked Exhibit 63-8, and is the minutes of the San Francisco Building and Construction Trades Council, the meeting of September 16, 1939, under the heading Unfinished Business, and the following notation appears:

'Motion carried that the Nicolai Sash and Door Company be placed on the "We don't patronize list,"

the words "We don't patronize" being in a quotation mark." [452]

Thereupon documents from Exhibit 11, for identification being correspondence produced by Local Union #42, were introduced in evidence as Exhibits Nos. 11-1, 11-3 and 11-4, and read as follows:

"Mr. Howland: The letter marked 11-1 reads as follows:

'12/13/38.

'Cabinet Manufacturers Institute of California Inc.
Lumber Products Association Inc.

San Francisco, California

December 12, 1938

'Millmen's Union #42, United Brotherhood
of Carpenters and Joiners of America.

Building Trades Council, 200

Guerrero Street

San Francisco, California.

'Gentlemen:—

'We have repeatedly asked for your cooperation in the matter of your having a sufficiency of Business Agents. To date we have seen no effective work on this matter. The millmen's product is on practically every job that employs a carpenter. When may we expect your cooperation.

Yours very truly,

CABINET MANUFACTURERS
INSTITUTE OF CALIFOR-
NIA INC.

By J. G. ENNES

Manager

LUMBER PRODUCTS ASSO-
CIATION INC.

By H. W. GAETJEN,
Secretary.' "

"Exhibit 11-4 is 'Report of Committee on Business Agents.' This is from the files of Local Union No. 42, dated January 31, 1939. It reads as follows:

" 'Local Union No. 42, having elected an additional Business Agent for the purpose of recapturing the work that has been going out of this territory and to non-union plants, the committee reports as follows: [453]

" 'We recommend that the additional Business Agent make it his principal work to contact Owners, Home Builders, Contractors, Architects, Merchants and Awarding Authorities of the City, County and State Governments to have their work done in Local Plants, hiring members of this Local Union.

" 'He should keep in constant touch with the Employer Associations and the individual Employers and obtain their cooperation for the same purpose.

" 'He should keep a constant check on all Retail Lumber Yards and Wrecking and second-hand yards to see that the millwork and cabinets they sell are of local Union made production, and all related activities.

" 'The other Business Agent should make it his principal business to take care of all the detail work concerning the members of this Local Union. Visit

the shops and check the working cards and working conditions and adjust members' complaints. This to include San Mateo County. He shall appoint stewards where necessary and see that all stewards perform their duty. He should check on all stamps and see that it is applied to all Union manufactured material. He should keep an accurate check on apprentices, their wage scale and school attendance and visit the apprentice school at least once a week and cooperate with the teachers of the school.

"He should not collect any dues from members until the assessment has been completed.

"He should also check on the shops of the Retail Furniture Houses.

"These recommendations are tentative and will be subject to revision in the light of experience.

"In order that the work of the Business Agents may be analyzed and properly apportioned and complete records kept, we recommend that each Business Agent make a daily report on the [454] forms to be provided and filed with the Recording Secretary. These reports to be available to the Committee for analysis and report on any necessary changes in these recommendations.

H. W. LINDLEY

D. J. EDWARDS

ALEXANDER WEISS

W. P. KELLY

HARVEY MILLER'

"There is a pencil notation around that last para-

graph concerning the reports which says: 'This section was never complied with.'

"Mr. Routzohn: I don't know whose handwriting that is.

"Mr. Howland: There is no indication of whose notation it is.

"This Exhibit No. 11-4 contains a further pencil notation at the top reading, "Read and Concur. Rec of Comm 1/31/39,' the day following the date of the letter.

"Exhibit 11-3 is a handwritten communication that says "Business Agent Committee Report. June 6, 1939.

"Your Committee recommends that on July 1st, 1939, Local Union #42 discontinue having an extra Business Agent and from that date only one Business Agent be employed.

Committee,

D. J. EDWARDS,

ALEX WEISS

H. W. LINDLEY

W. P. KELLY

R. H. MILLER.'

"At the top in pencil, "N. B. Concurred." "

Thereupon "U. S. Exhibit No. 11-8" from the file of correspondence produced by Local Union No. 42, over the objection that it was immaterial, irrelevant, incompetent and hearsay as to the defendants, and was introduced and read as follows: [455]

"Mr. Howland: It is on the letterhead of the Jones Hardwood Company, 1401 Potrero Avenue, San Francisco, California, dated December 28, 1938, addressed to:

Secretary,
Carpenter's Union
200 Guerrero St.,
San Francisco, Calif.

'Dear Sir:—

'On a number of instances, where we have had orders for doors manufactured by the Roddis Lumber and Veneer Co., Marshfield, Wisconsin, it has not been possible for us to complete delivery due to some restriction that your Union has made or imposed.

'Will you please advise us if this policy is still in effect.

'Also, it has been a practice to bring Ponderosa Pine into this market in some grades, run to certain patterns. Several months ago we unloaded a car of this material and were paid a visit by one of your delegates, who advised our foreman that this material constituted 'hot cargo' and that our men could not handle it.

'Will you please also advise us if this policy is still in force?

Yours truly,

JONES HARDWOOD
COMPANY
NELSON E. JONES,
Manager.' "

Thereupon document was introduced in evidence as defendant's "Exhibit G", and read as follows:

"Mr. Tuttle: Yes, it is very short. It is on the

letterhead of the United Brotherhood of Carpenters and Joiners of America, dated April 7, addressed to:
'Mr. D. H. Ryan, Secy.,
Bay-Counties District Council,
200 Guerrero St.,
San Francisco, Calif.

'Dear Sir and Brother:— [456]

"We are in receipt of a letter from Local Union No. 1689 of Tacoma, Washington, asking us to communicate with your Council and advise that their members are working for the Tacoma Millwork & Supply Co. under agreement and have the use of our label for their products, therefore, any material coming into your community from this firm bearing our label would be manufactured under consideration satisfactory to our organization.

"Yours fraternally,

M. A. HUTCHESON,

First General Vice President."

Thereupon the following from the constitution of the United Brotherhood was introduced in evidence and read as follows:

"The only other thing I have to read is this, after Court adjourned I noticed that in reading from the Constitution of the United Brotherhood I had failed to read two paragraphs which are marked, they are very brief, and if I may read them now I will. One is under the heading of "Label", Section 60, subparagraph (d):

"No agreement shall be made or renewed with

any firm granting the use of the label after April 1, 1916, unless all shops and mills of the firm have an eight-hour working day and employ only members of the United Brotherhood, except where dispensation has been granted by the General President upon application from the District Council or Local Union.'

"Now, some of the correspondence, your Honor, makes reference to the General Executive Board of the United Brotherhood, and that membership is dealt with in Section 15. I just want to read two sub-paragraphs. I will say that the Executive Board consists of a number of members, seven of whom are elected from different divisions of the jurisdiction of the Brotherhood of America, and then the General Executive Officers ex-officio, and [457] the two paragraphs I want to read are these, sub-paragraphs (f) of the General Executive Board shall "protect the property and interest of the United Brotherhood in such a manner as they may deem helpful and beneficial, so long as it is not inconsistent, and is within the meaning of this section.'

"Then paragraph D: 'The general executive board shall decide points of law, all grievances and appeals submitted to them in legal form and their decision shall be binding until reversed by the convention.'

And Sub-paragraph E: 'The general executive board shall have power to authorize strikes in conformity with the constitution and laws of the United

Brotherhood, and when necessary to defend the organization in any locality against the attacks of employers, combinations or lockouts, or any attempt to disrupt or destroy the organization, to support such locality by levying a per capita assessment and by ordering a cessation of work for any employer involved, irrespective of where such work is located; enter into agreement with other organizations with reference to jurisdiction over work; or a general offensive or defensive alliance.'

"Now, your Honor, there are provisions in here which I won't read, because they are rather extensive, and I am sure counsel for the Government will not object to this statement, that the general convention of the Brotherhood, which is the supreme authority of the Brotherhood, meets every four years, and it is composed of delegates from all over the United States representing local councils.'" [458]

Thereupon, Exhibit 115-57 for identification, was read to the jury as follows:

"I will now read the reply, (to Exhibit 115-57) dated August 30, 1938, addressed to Mr. M. A. Hutcheson, First Vice-President, from Mr. Ryan, which reads as follows:

"Dear Sir & Brother:

"Replying to your letter of recent date relative to our agreement with the shops and mills in this district, we are enclosing herewith copy of our agreement, the wages, hours and working conditions being set by arbitration.

"As you will see, this agreement is signed by

the Cabinet Manufacturers Institute of California, Northern Division and by the Lumber Products Association of San Francisco, representing all of the Cabinet shops in San Francisco and practically all of the planing mills in San Francisco.

“A number of shops and mills in Alameda County and other parts of the district have signed individual agreements identical with the one enclosed.

“We have agreed with the employers signatory to this agreement, that we will remove the Union Label and our men from any shop or mill in this District that does not comply with the terms of the enclosed agreement on or before September 30th, 1938.

“Trusting that this arrangement is satisfactory to the general office, and we assure you that we will permit no stamp in any shop or mill in this district, all of whom are operating under Union conditions now, unless they continue those conditions and pay the increase scale by the date stipulated.

Fraternally yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS

D. H. RYAN,

Secretary.”

Thereupon, Exhibit 123-8 for identification, being contract between defendant Redwood Manufacturers Company and the defendant [459] United Brotherhood of Carpenters and Joiners of America, Millmen's Union 1956, dated November 1, 1938, was

introduced in evidence, and portions read as follows:

“ * * * it is somewhat different as to form; some provisions are the same and it is entitled ‘Employer-Employee Agreement upon Wages, Hours and Working Conditions,’ and section 1 is general, section 2 relates to wages, section 3 relates to the hours of work, section 4 to overtime, section 5 to shift work, section 6 to supervisors, section 7 to firm members, section 8 to apprentices, section 9 to apprentice ratio, section 10 relates to employers’ limitations, section 11 relates to incapacitated employees, section 12 relates to maintenance work, section 13 relates to shop stewards, and I will read, if your Honor please, section 14, which is entitled ‘Purchase of Materials.’

“ ‘In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done, on any material or article that has been made under conditions unfair to members of the U. B. of C. & J. of A., or unfair to employers of members of the U. B. of C. & J. of A., signatory hereto. The purchase, working, and sales of the following products is excepted:’—then follows a list of products.

“ ‘This paragraph that I have just read, your Honor, is identical with the paragraph 17 as revised which has previously been read from the correspondence between Mr. Ryan and Mr. Hutcheson on December 1, 1938. I will not read the list of the exempted products. Then follows the clause:

"'Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission or the Sherman Anti-Trust Laws.' [460]

"Section 15 relates to restrictions on work, section 16 union label, section 17 to work at building site, section 18 adjustment of grievances, section 19 termination of agreement, section 20 rate differential, 21 strikes, etc., and the contract is signed 'Redwood Manufacturers Company by J. W. Pearson, Vice President' and 'United Brotherhood of Carpenters & Joiners of America, Millmen's Union No. 1956, by Burt Goodman, President and Wm. J. Laskey, Secretary,' and is also signed by the 'California State Council of Carpenters, by J. F. Cambiano, President, and D. H. Ryan, Secretary,' and is further signed by the 'United Brotherhood of Carpenters & Joiners of America by J. F. Cambiano, General Representative.'

"The Court: Is that all?

"Mr. Howland: I was just looking to see what was on this addenda, your Honor. There is a page attached following the signature page which reads as follows:

"'It is to be confirmed by the International of the U. B. of C. & J. of A. that they will not approve any agreements entered into between the employers and the local unions under their jurisdic-

tion in the counties of San Francisco, Alameda, Contra Costa, Marin, San Mateo, and Santa Clara, unless said agreements be uniform with respect to rates of wages, hours and working conditions.

"It is understood between the Company and the Union, that this section is being included with the complete understanding that in this and in future agreements, wage rates of the Redwood Manufacturers Company must be competitive with competing manufacturers whose plants are located outside of the six counties involved in this agreement. In general, such competition is as listed in Section 20."

"Then there is an addenda which relates to taking inventory on Saturdays and Sundays when necessary.

"Also attached as Exhibit A is a wage scale listing [461] classifications of employees and wages. That is all that I desire to read from 123-8."

Thereupon, Exhibit 57-3 for identification, was introduced in evidence and read to the jury, as follows:

"Mr. Howland: This letter is on the letterhead of the Commercial Fixture and Store Front Institute dated February 1, 1939, and is addressed to Fink & Schindler Company, 502 Brannan Street, San Francisco, and reads as follows:"

"Gentlemen:

"The San Francisco Employers' Council is soliciting subscriptions from individual shops. They provide for individual memberships and Trade Association memberships. I am of the opinion the

shops should not take out individual memberships. "If membership is to be taken out it should be an Association membership. This in view of the fact that our labor relations are on an Association basis.

Very truly yours,

COMMERCIAL FIXTURE &
STORE FRONT INSTITUTE
INC.

By J. G. ENNES,
Manager.

That signature is typed; there is no pen and ink signature."

Thereupon, Exhibit 60-9 for identification, being letter of same text to Mangrum, Holbrook & Elkus and from its files, was introduced in evidence as Exhibit 60-9.

Thereupon, Exhibit 124-48, being minutes of the Conference Committee of local unions, were introduced in evidence as Exhibit 124-48, and read as follows:

"Mr. Howland: This is the minutes of the meeting of August 27, 1938, the 'Conference Committee of Millmen's Unions 42, 550, 262 and 1956, Convened at 12:00 noon, Chairman William P. Kelly presiding.' Then the following:

"District Council Secretary Brother Dave Ryan was called upon and stated he called for a meeting of the Building [462] Trades employers and employees conference committee to meet with all concerned with the present situation wherein the plan-

ing mill owners have failed to pay the arbitration award. The meeting was held Thursday afternoon, in session from 1:30 p.m. till 5:30 p.m. John Cahill opened to the effect he understood the employers not agreeing to pay wanted definite assurance we carry out our part. If the mills pay then what insurance from us in carrying out our part."

Thereupon, the following was introduced in evidence from Exhibit 111 for identification, and read as follows:

"Mr. Howland: The minutes of Bay Counties District Council of Carpenters meeting on October 19, 1938, under the heading Remarks, the following appears:

"'Brother Cambiano reported in detail on settling of the mill situation.'"

Thereupon, paper marked for identification 115-49 was introduced in evidence, and read by Mr. Howland as follows:

"Mr. Howland: This letter is a carbon copy of a letter, and at the top in typewriting appears the following: "Identical communication sent to Mr. Edwards, Gaetjen, Lund, McKeon". It is dated January 27, 1939.

"'Mr. J. Ennis, Secretary
Cabinet Manufacturers Institute of California,
Northern Division
Fourth Floor, New Call Building
New Montgomery Street
San Francisco, California

“Dear Sir:

“At a meeting held Wednesday, January 18, 1939, in the New Call Building, between a committee representing Millmen's Unions #42 and #550 and the District Council of Carpenters, and representatives of the employers in the shops and mills in San Francisco, Alameda, San Mateo and Marin Counties, at which you were present, a motion was adopted by unanimous vote requesting the representatives of the employees in the shops and mills to [463] take whatever steps were necessary to bring about a meeting of the employers and the employees in the aforementioned Counties and also in the Counties of Santa Clara and Contra Costa, for the purpose of negotiating for an agreement to be uniform in hours, [464] wages and working conditions in all six counties.

“This is to inform you that we immediately requested the General Office of our organization in Indianapolis to have some representative of the General Office make arrangements for such a meeting with as little delay as possible.

“You will recall that at the above referred to meeting we were notified by the representatives of the Cabinet Manufacturers Institute and by the Lumber Products Association of San Francisco that they desired to terminate their contract as of May 1, 1939 as provided for in Paragraph #28 of that contract, and that they had served official notice in writing upon our organization to that effect some time prior to the meeting.

"This is to officially notify you that it is the desire of Local Unions #42 and #550 and the Bay Counties District Council of Carpenters to make certain changes in the last agreement we entered into with the Planing Mill Owners and Cabinet Manufacturers in this district, and we are notifying you in writing at this time in order to comply with the provisions of our last agreement.

"It is our desire to consummate a new agreement with as little delay as possible and we assure you that we will fully cooperate with you and your associates to the accomplishment of that end.

"With best wishes, we remain,

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS

D. H. RYAN,

Secretary.' "

Thereupon, Exhibit 43-4 for identification was introduced in evidence as Exhibit 43-4, and read as follows:

"Mr. Howland: This letter is written on the letterhead of The United Brotherhood of Carpenters and Joiners of America, from the Hotel Stillwell, 838 South Grand Avenue, Los Angeles, California, dated June 3, 1939, addressed to Mr. William L. Hutcheson, General President, Carpenters' Building, Indianapolis, Indiana. [465]

"Dear Sir and Brother:

"My report for the week ending June 3rd, as per Secretary Ryan's request I went to San Fran-

cisco to attend a meeting of the Mill Owners Saturday afternoon. Upon arriving, we discovered the Mill Owners, at least a large proportion of them, had left town to take advantage of the Saturday to Tuesday holiday. There was no meeting. Same has been set for this coming Monday. I believe we will be able to arrive at an agreement. We may have some difficulty with Mr. Edwards, of Oakland, as he wants to add a number of doors to the exempted list.' "

Thereupon, U. S. Exhibit 175 for identification was introduced in evidence, and read as follows:

"Mr. Howland: This document is marked at the top, 'Rough draft subject to correction Agreement modifying Employer - Employee Agreement of Wages, Hours, and Working Conditions.'

"The Court: Signed by whom?

"Mr. Howland: It is signed by United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, William P. Kelly, A. W. Edwards, W. L. Wilcox. The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, E. H. Ovenberg, W. C. O'Leary, also signed by Bay Counties District Council of Carpenters, D. H. Ryan; Lumber Products Association, Inc., J. A. Hart, Carl A. Warden; Cabinet Manufacturers Institute of California, Inc., Northern Division, J. G. Ennes. The text of the document is as follows:

"The memorandum as to payment of wages, established by Arbitration effective next pay day, dated August, 1938, is hereby made void.

"The rate of wages as established by Employer-Employee Agreement effective June 15, 1938 is hereby modified as follows:

"Effective October 18, 1938, inclusive, wherever the Journeyman Rate of Wage of One Dollar and Twelve and One-Half [466] cents per hour and One Dollar per hour appears, said rates shall be One Dollar and Six and one-quarter cents per hour and Ninety-six and one-quarter cents per hour respectively.

"The rates of wage of Apprentices shall be changed to:

(a) In the first year:

for the first 3 months.....	\$2.00
for second 3 months.....	2.50
for the last 6 months.....	3.00

(b) In the second year:

for the first 6 months.....	3.50
for the last 6 months.....	4.25

(c) In the third year:

for the first 6 months.....	5.00
for the last 6 months.....	5.75

(d) In the fourth year:

for the first 6 months.....	6.50
for the last 6 months.....	7.50

(e) After the fourth year the Journeymen's minimum rate of wage shall apply.

"Paragraph 17 is changed by mutual agreement to read as follows:

"17. In the interest of providing employment, it is agreed that no material will be purchased

from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto.

“The purchase, working and sales of the following products is excepted:”

“Then follows a list of the types of material, which I will not read, which has heretofore been read.

“18. The purchase and sale of the following products is excepted:”

“Then follows another list. This list is identical to the list previously read.

“Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that [467] of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws.

“With reference to the San Francisco signature: Such payrolls in the hands of the Employers over and above such offsets claimed under the terms of the award are to be given to the Union representative upon demand and receipt.

“Unendorsed check is to be given to the Union representative upon endorsement or written order of the Employee in whose name the check is drawn and receipt by the Union.

“Such unsatisfied offsets due the Employer that exist after the application of checks endorsed to the employer shall be paid by the Union not later than the completion of the job on which the offset is due.

“It is to be confirmed by the International of the United Brotherhood of Carpenters and Joiners of America that they will not approve any agreements entered into between the Employers and the local Unions under their jurisdiction in the Counties of San Francisco, Alameda, Contra Costa, Marin, San Mateo and Santa Clara unless said agreements be uniform with respect to rates of wages, hours and working conditions.’

“Attached hereto is a paper entitled, ‘Memorandum as to payment of wages established by arbitration effective next pay day.’”

“Mr. Faulkner: ‘The rate of Wages established by Employer-Employee Agreement effective June 15, 1938, shall be paid in the following manner:

“1. All Employees subject to the Agreement shall be paid the new rate of wage retroactive to July 10, 1938.

“2. The pay roll shall be made up so that the difference between the old rate of wage and the new rate is on a separate check. The check covering the difference shall be endorsed at the time of payment by the Employee to the Employer and a [468] receipt issued covering such check or checks showing name of employee and amount in detail, said receipt to be delivered to a representative of

the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. A memorandum receipt will be given the Employee if demanded. The check shall be applied to offsets arising from work subject to the old rate of wage as set forth in Paragraph 32 of the Agreement. The total amount so applied shall not exceed such offsets as agreed to by the Employer and the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. The amounts of the offsets agreed to shall be in writing and signed by the Employer affected and the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. The endorsed checks shall be held intact for the Union's accounting.

“3. In the case of offsets not existing or having been paid off, then the checks shall be endorsed to the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters in such manner as they shall designate. The Employer shall deliver said checks to a Representative of the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters upon demand and receipt for same.

“4. All funds withheld by the Employer as offsets against agreed to jobs subject to old rate, unless completed by March 1, 1938, shall be released to the Union. Upon completion of said jobs the Employer shall be refunded by the Union in the amount agreed to.

“5. The above practice shall terminate when mutually agreed upon through the medium of the Joint Committee referred to in Paragraph 27 of the Agreement.

“6. The failure of the Union to meet its obligation as to Paragraph 10 of the Agreement, by October 1, 1938, shall be prima facie evidence of a breach of contract on the part of the [469] Union. This memorandum shall not be construed as modifying the terms of the Agreement.

“7. Unadjusted matters shall be referred to the Joint Committee referred to in Paragraph 27 of the Agreement.

San Francisco, Calif. ✓

August 1938.

UNITED BROTHERHOOD OF
CARPENTERS & JOINERS
OF AMERICA MILLMEN'S
UNION No. 42,

with the signatures 'William P. Kelly, A. W. Edwards, W. L. Wilcox.' ”

“The Court: They have all been read heretofore, haven't they?

“Mr. Faulkner: No. United Brotherhood of Carpenters & Joiners of America Millmen's Union No. 550, E. H. Ovenberg, W. C. O'Leary. Bay Counties District Council of Carpenters, D. H. Ryan, Lumber Products Association Inc., J. A. Hart, Carl A. Warden. Cabinet Manufacturers Institute of California Inc. Northern Division, J. G. Ennes.' ”

"In other words, that is a separately executed paper, your Honor."

E. M. CHRISTENSON

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

I am personnel director of the Atlantic Seaboard, with J. C. Penney Company. I have been with that Company since 1918. Prior to the position I have now, I was district manager of northern California. I became district manager in 1936 and served until January 1, 1940, with headquarters in Oakland. I had occasion to plan the installation of a store in South San Francisco, in 1938. We were going to use fixtures from the closed Vacaville store, and we would need additional fixtures to complete the job. [470] We placed the order for the additional fixtures with the Grand Rapids Fixture Company. Exhibit 176 for identification is that order.

Thereupon, the document was received in evidence and marked U. S. Exhibit 176. It was read to the jury, as follows:

"* * * this is an order blank of J. C. Penney Company, Portland, Oregon, dated August 25, 1938, to Grand Rapids Store Equipment Company, 'Ship to J. C. Penney Company located at South San Fran-

(Testimony of E. M. Christenson.)

cisco, State of California, freight via S. P., delivery September 12, 1938, Terms, usual.' Then there are three separate pages of quantities of merchandise, fixture equipment for that store."

The order was cancelled. I recommended it be cancelled.

Thereupon U. S. Exhibit No. 177 was identified as a request sent by the witness to the construction department to cancel the order of Grand Rapids.

"Mr. Clark: We will offer it in evidence.

"Mr. Faulkner: We object to that telegram from Mr. Christenson to his own boss on this subject matter as hearsay as to the defendants.

"The Court: Overruled.

"(The telegram was marked 'U. S. Exhibit No. 177.')

"Mr. Clark: I will read it to the jury, your Honor.

"The Court: Read it.

"Mr. Clark: 'Oakland, Calif., September 3, 1938.

" 'F. R. Hesser—J. C. Penney Co

" '330 West 34 St NYK—

" 'Union served notice they will not handle Grand Rapids or Webber fixtures for South San Francisco store Vacaville fixtures okay Insist fixtures must be made under same conditions wages as Frisco area regardless of union stamp.—Consider having orders transferred to Unit Built. Union contacting me again Answer Western Union—

E. M. CHRISTENSON.' " [471]

(Testimony of E. M. Christenson.)

The notice served by the union that they will not handle Grand Rapids fixtures was at a telephone conversation.

"Mr. Faulkner: I ask that go out.

"The Court: Yes. Who did you have the conversation with?

"A. Who called me? I don't know.

"The Court: Well, tell us all about the conversation.

"Mr. Faulkner: Just a moment. We object to a conversation with an unidentified person as hearsay.

"Mr. Clark: We will identify him.

"The Court: Mr. Clark says he will identify the person.

"Mr. Clark: Q. Who did he say he was?

"A. He said he was a friend of the union, or he was speaking for the union and a friend of the Penney Company.

"Q. What did he say?

"Mr. Routzohn: I object; he is not answering the question.

"The Court: Overruled.

"Mr. Faulkner: A friend of the Penney Company.

"The Court: A member of the union.

"Mr. Faulkner: No, he did not say he was a member—

"The Court: Read the answer of the witness.

(Record read.)

(Testimony of E. M. Christenson.)

"Mr. Faulkner: We object as hearsay and not binding—

"The Court: Overruled.

"Mr. Clark: Q. So it will be straight all around, what did he say when he talked to you?

"Mr. Faulkner: He already answered it.

"The Court: Overruled."

He said what is stated in the wire,—that is the matter of conditions that existed in the Bay Area, whereby the union would not set fixtures that did not bear the stamp, and indicated the fixtures should come into the Bay Region under the same conditions [472] and so forth that existed in Frisco. I said, "Well, we have these fixtures coming from Grand Rapids." He said, "Yes, we know all about that." "Those fixtures," I went on to say, "have a union label." "Yes, we know all about that, but they still would not comply with the regulations that we demand fixtures to be installed under in this area." Then I asked him about the Vacaville fixtures. He stated they were satisfactory because we owned those fixtures and the conversation ended by him stating he would contact me again.

After we cancelled the Grand Rapids order, we placed the order with Unit-Bilt Fixture Company, of San Francisco.

Thereupon, invoice covering such order was introduced in evidence as U. S. Exhibit No. 178, over the objection it was hearsay as to everyone but the Unit-Bilt Fixture Company. Unit-Bilt Fixture

(Testimony of E. M. Christenson.)

Company, of San Francisco, finally filled the order for the additional fixtures.

Cross Examination

By Mr. Faulkner:

Unit-Bilt Fixture Company in 1938 and for some time prior thereto, had a relationship with the J. C. Penney Company. They had filled fixture orders for us. We had, in fact, blanket orders placed with them. It was the practice of J. C. Penney Company in 1938 to select fixture people in various localities to build fixtures for them in anticipation of their needs. The fixture company that had supplied those requirements in San Francisco prior to August 25, 1938, was Unit-Bilt Fixture Company. The next nearest fixture company to San Francisco where we had a similar arrangement was in Portland, to the north, and Los Angeles to the south. The South San Francisco store was a new place. We were abandoning a store in Vacaville. The fixtures from Vacaville were to be installed in South San Francisco. The fixtures in Vacaville were moved by ourselves; we didn't have anyone move [473] those. We usually have our construction department, or representatives of Grand Rapids install them in South San Francisco. The fixtures from Vacaville were installed by the Unit-Bilt Company. It was our intention that who ever installed the fixtures would install the whole job—both the Vacaville fixtures and the new fixtures.

(Testimony of E. M. Christenson.)

The paper you show me is an order placed by our construction department simply to transfer the fixture account from our Vacaville store to our South San Francisco store. It is dated August 25, 1938—the same date as our order with the Grand Rapids people. I know Mr. Roselyn and the Unit-Bilt Fixture Company. They had installed fixtures for us. They prepared fixtures in advance of installation and kept them in stock for our company. On August 25, 1938, they had fixtures in stock for our company. I know nothing about the instrument shown me. I do know that the fixtures listed in the document were ultimately installed, in our South San Francisco store, pursuant to direction of J. C. Penney Company to Unit-Bilt Fixture Company. We have shipped fixtures from different places a greater distance than from Portland to San Francisco. We had shipped Grand Rapids fixtures into California prior to this time, during the period that Unit-Bilt was acting for us.

I have testified to a conversation with the person who told me he was a friend of our company and that he spoke for the union. He mentioned he spoke for the union. Mr. Roselyn wasn't a party to that conversation, that I know of. I never spoke to Mr. Roselyn, our agent, whether there ever existed any arrangement to keep Grand Rapids stuff out of here. Our relationship with Mr. Roselyn was satisfactory. I knew Mr. Roselyn very well in 1938 and talked to him frequently. I had this telephone

• (Testimony of E. M. Christenson.)

conversation and exchanged wires. Mr. Roselyn and I had dealings with Grand Rapids Company. The union man said he knew that we [474] had ordered Grand Rapids fixtures but it did not comply with the regulations that were essential to installation here. That is the substance of it. That telephone call was never discussed with Mr. Roselyn. The Unit-Bilt Fixture Company covered everything in the Grand Rapids order, I believe; not more. It covered installation the Grand Rapids did not.

Thereupon, paper shown to the witness and referred to in his testimony was marked Defendants' Exhibit for identification.

I don't recall if there was additional material ordered from Unit-Bilt. The words, "Union served notice," in the telegram referred to the telephone conversation. I am sure that on September 3 we had not placed any part of this order with the Unit-Bilt. Grand Rapids made the original fixtures in Vacaville.

Redirect Examination

By Mr. Clark:

I assume the Grand Rapids fixtures installed at Vacaville were from Portland. Order to Grand Rapids is August 25. Unit-Bilt Fixture order is October 20, 1938.

Thereupon, Exhibit 178 was read as follows:

"* * * the Government Exhibit 178 is on the order form of the Unit-Bilt Fixture Company, 8th and

(Testimony of E. M. Christenson.)

Folsom Streets, San Francisco, California, and is dated October 20, 1938. 'Sold to J. C. Penney Co., Inc. Store No. 1539, South San Francisco, California. Our Order No. 3196. Your Order No. R. Williams. Terms Net. Ship via Installed. Labor and material necessary to manufacture the following fixtures:'—then follows a list of equipment and labor charges."

Recross Examination

By Mr. Faulkner:

Paper of the Unit-Bilt is an invoice—a bill for something already supplied. Removal of fixtures from the Vacaville store started early in September, following this telegram. [475] It is not a fact, to my knowledge, that before we cancelled any order with Grand Rapids, Unit-Bilt Fixture Company had part of the order. Orders of that kind that came from New York do not pass through my hands; they sometimes emanate direct from New York. I had a discussion with Mr. Roselyn about the San Francisco job after the order had been placed. I don't remember any conversation that the home office had placed an order with Mr. Roselyn before the Grand Rapids had been cancelled.

Thereupon, minutes from Exhibit 18 were read as follows:

"Mr. Lehman: From the minutes of this Union 550, April 29, 1937:

“ ‘Brothers Ovenberg and O’Leary were absent attending a Conference meeting in San Francisco with the Mill Owners.’

“ ‘Same Union, Minutes of July 15, 1937:

“ ‘Reports of officers and Committee, Brothers Wilson, Irish, O’Leary, and Ovenberg reported the proceedings of the District Council, the recent referendum on new agreements between employers and employees was carried by a large majority.’

“ ‘Minutes of the same Union, August 26, 1937:

“ ‘Brothers O’Hara, Cicinato, and O’Leary reported on the Executive Officers Meeting with Mr. Edwards.’

“ ‘The minutes of Union 550, December 16, 1937—December 18th are:

“ ‘Conference Committee Brothers Ovenberg and O’Leary attended a meeting with the Mill Owners in San Francisco.’

“ ‘Continuing from the minutes of Union 550, Exhibit 21, from the minutes of July 22, 1938: ‘The minutes of the B. Trades Council were read and commented on by Delegate Irish, the Council voted to Back the Millmen in the enforcement of our new agreement. Business Agent O’Leary gave his weekly report stating the Building Trades Business Agents voted to back Local 550 in the Arbitration Award.’ [476]

“ ‘Mr. Tobriner: I object to the reading ‘B. Trades’ as ‘Building Trades,’ and I move that it be stricken.

“ ‘The Court: The objection is overruled.

"Mr. Lehman: Continuing from the minutes of Union 550, August 5, 1938:

" 'President Sholden appointed Brothers Irish, Ovenberg, O'Leary and Cicinato to confer with Mr. Edwards, of the Wood Products Inc., who is seeking admission to address our meeting.'

"Continuing with August 19, 1938:

" 'Brother Ovenberg reported on a meeting held with Mill Owners August 16th and Brother Sholden reported on our meeting held in San Francisco August 13th stating that both Brother Muir, of the General Office, and Brother Ryan, of the D. C. were well pleased with our program.'

"The same minutes of August 26, 1938:

" 'Conference Committee, Brothers Bennett, Irish and Sholden gave a resume of the meeting held in San Francisco Saturday August 20 and also on the activities of our special field men.'

"Minutes of Union 550, September 16, 1938:

" 'Brother Ovenberg reported on the Conference Committee meeting held Saturday, the 3rd. Brother Dave Ryan is at the General Office for instructions on our mill agreement enforcement.'

"Continuing, October 14, 1938:

" 'Business Agent O'Leary was called and explained that he had went around with Business Agents Wilcox of No. 42 and William Kelly, President of the Conference Committee and Joe Cambiano, of the United Brotherhood and contacted the Mill Owners Association heads in all the above counties.'

“The ‘above counties’ referred to are Santa Clara, San Mateo, San Francisco, Marin, Alameda and Contra Costa.

“ ‘Brother Cambiano gave us a good talk on the proposed agreement and urged its adoption. A motion was made and seconded [477] that we approve and adopt the recommendation of the Conference Committee as submitted by the Mill Owners. Board Member Abe Muir was present and gave his usual good talk and stated he did not want to hear any criticism of the Committee, as he felt they had done a good work. Brothers Kelly and Wilcox gave us a few remarks. Brothers Murray, Cicinato, Crookshank and Irish, Ovenberg and several others spoke on the question. Vote called for. Brother Gardner was appointed judge and Joe Correia and Earl Smith tellers, the ballots were passed out, collected and counted, with the following results, 246 yes votes and 10 no votes and two blanks, whereon President Sholden announced the motion carried by Local 550 with Local No. 42 to vote on the same compromise agreement Monday evening October 17, '38.’

“Continuing with the Minutes of 550, January 13, 1939:

“ ‘By motion our present Conference Committee, consisting of Brothers O’Leary, Ovenberg, Sholden, Irish, O’Hare, Bennett, and Mickelsen were appointed to serve for Local 550 during 1939 as a Conference and Negotiating Committee.’

“Continuing with the Minutes, March 10, 1939:

“‘Reports Brothers Ovenberg, O’Leary, Irish and Sholden all gave reports on the Conference Committee meetings with our employers on the question of a new agreement for the six Bay counties.’

“‘Continuing with the Minutes of 550, March 24, 1939:

“‘Brothers Ovenberg and Irish of the Conference Committee spoke of holding several meetings with Mill Owners of the Six Bay Counties and were awaiting information from the General Office on certain phases regarding an agreement for this District the mill owners seem willing to continue the present hours, wages and working conditions.’

“‘Continuing with the minutes, April 14, 1939:

“‘Brothers O’Hare, Irish and Ovenberg all reported for [478] the Conference Committee on their meetings together and also with the Mill Owners on a new agreement.’

“‘The same minutes, April 28, 1939:

“‘Conference Committee, Brothers O’Leary, Ovenberg, Irish and Sholden reported on the activities of the Committee with discussions on exempt materials.’

“‘May 5, 1939, Minutes of Union 550:

“‘Brothers O’Leary, Sholden and Ovenberg reported for the Conference Committee stating they were still busy trying to negotiate a new agreement with our employers for this district.’

“‘May 12, 1939:

“‘President Sholden reported for the Conference Committee and Brother O’Leary read notes on Sat-

urday's meeting, stating a motion was passed asking Bothers Cambiano and Ryan to use their best efforts in effecting an agreement for us with our employers.'

"Minutes of Union 550, June 9, 1939:

"Special Meeting held called by our Executive Officers for the purpose of considering and voting on a new agreement covering our Six Bay Counties, namely, San Francisco, Alameda, Contra Costa, Marin, San Mateo and Santa Clara Counties; the agreement was read by Brother O'Leary and explained by our Conference Committee. After discussion a motion was passed that we proceed to vote by ballot. Brother Cicinato and Harder were appointed tellers, with the following results, 104 Yes votes, 2 No votes.'

"Continuing with the minutes of Union 550, July 7, 1939:

"Brothers Sholden and O'Leary told of the Conference Committee meetings and Brother Ovenberg reported that Brother Ryan was desirous of another meeting with Mill Owners.'

"Minutes of November 10, 1939:

"President Irish declared R. S. O'Hare, J. P. Sholden, [479] W. C. O'Leary, E. H. Ovenberg and C. H. Irish as our elected Conference Committee.'

"From the same union minutes 550, March 1, 1940:

"Business Agent Charles Roe gave his report for two weeks was accepted.'

"If your Honor please, I would like to offer in

evidence and then read certain minutes from Exhibit 121 For Identification, minutes of Local Union 1956.

“Mr. Faulkner: Our objection goes to each part of these minutes, that is understood, is it?”

“The Court: Very well, overruled.

“(The minutes were marked ‘U. S. Exhibit 121’ in evidence.)

“Mr. Lehman: From the Minutes of 1956, May 20, 1937:

“‘Brother Cambiano delivered a speech on industrial organization; also the reading and explanation of our agreement with the Redwood Manufacturing Co.’

“Skipping several lines, in the same meeting:

“‘The agreement was accepted 100 per cent.; also a standing vote of thanks was accorded Brother Cambiano for his hard work.’

“Continuing with the Minutes of Union 1956 for October 27, 1938:

“‘Brother Cambiano read our new agreement and discussed several points.

“‘Motion made, seconded and voted aff’—affirming—‘that we accept our agreement with the proviso that the paragraph relative to the Six County setup be inserted. Vote was 53 Yes, 1 No, and 3 blanks.’

“From the same minutes of the Union, October 26, 1939:

“‘A vote was taken to adopt the county setup pertaining to wages and hours. It carried unanimously.’”

JOHN KLIER [480]

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

We have a little retail lumber yard and buy and sell lumber, including millwork. I know Mr. Walter C. O'Leary. I had a conversation with him in the spring of 1939 in our lumber yard. He told us at that time we would not be able to bring molded knotty pine in any more, and if so, they would be obliged to have a picket out front. I had purchased the molded knotty pine from Pyramid Lumber Sales Company, represented by Chris Wininger. At that time we had ordered some of that material, and it happened to come in in one of our competitor's yards, who happened to have a spur track, and that is when Mr. O'Leary spotted it. The lumber came in at the yard of Sheehan & Ballard, by railroad. It was a car of knotty pine and it was unloaded. It stood there for about a month and O'Leary said we would not be able to take it out of the yard, and after about 30 days he said it was all right to take it out. I believe he said, outside of the city limits, or outside of that territory. I saw it after it was unloaded. There was a sign on it that said, I believe, "Hot Cargo" to Teamsters Union and Millmen's Union. A while later there were several of them came in—Mr. O'Leary, Les Roberts, who was head of Building Trades Council in Contra Costa

(Testimony of John Klier.)

County, and Bob something from carpenters headquarters, and the Labor Union was there. They went through all of the stock and told us anything that did not have the label stamped on it we had to get rid of, or burn it up. My brother was present at the time. They stayed practically all morning—came a little after eight o'clock and left shortly before twelve. Later on Mr. O'Leary came about once every two weeks for a while. He just looked around. I didn't have no conversation with him at those times, because we never had any [481] patterned stock on hand. We didn't continue to purchase knotty pine from Mr. Wininger for a while—I would say a good six months. We got one shipment of knotty pine locally from a local mill. I do not recall the price, from Mr. Wininger. It was considerably cheaper than what we paid locally.

Cross-Examination

By Mr. Faulkner:

We run a mill in El Cerrito—Klier Bros. Lumber Company.

Cross-Examination

By Mr. Routzohn:

The knotty pine was objected to by Mr. O'Leary in the spring of 1939. It came from Ewauna Box Company. I believe it is in Klamath Falls, Oregon. I knew when I ordered that Mr. Wininger was to purchase from the Ewauna Box Company, at Klamath Falls. He had been getting all of his material

(Testimony of John Klier.)

from that one concern. I knew the articles that were objected to did not have the union label.

I did not know whether Ewauna Box Company was organized at all,—either C. I. O. or any other organization. We knew it did not have any stamp on it. I understood the import of the words “Hot Cargo” as meaning it was non-union. This particular material did not have any label of any kind on it. What he was objecting to was the fact it did not have the union label. We have had similar cases which had the stamp on it but he would not recognize it. It was an A. F. of L. stamp. It was a shipment of doors from Robinson Manufacturing Company, up north somewhere. It had what I understand to be the stamp of the United Brotherhood of Carpenters and Joiners of America, the union label on it. That was not the local stamp. That is the stamp issued by the United Brotherhood to the manufacturers that manufacture things by agreement with the local unions.

Redirect Examination [482]

By Mr. Burdell:

This label was the United Brotherhood; Mr. O'Leary told me right out he would not recognize it if it came from the north, regardless of whether or not it had the stamp of the United Brotherhood. I am familiar with the stamp of United Brotherhood of Carpenters and Joiners. We have no stamps. I have noted different numbers on the stamps. I imagine

(Testimony of John Klier.)

they refer to a particular mill, because we have had shipments from different mills and they all seem to have a different number. You could tell the location of the mill from the number on the stamp and whether or not it was locally manufactured, or a foreign label, or Washington or Oregon.

Recross-Examination

By Mr. Rutzohn:

I have seen the stamps that come in from outside lumber yards. They are all alike, except they have a different number. I believe it is not a local stamp—it is a stamp issued by the United Brotherhood, from Indianapolis.

Thereupon, Exhibit 5 for identification was introduced in evidence, being minutes of Millmen's Union No. 42, and read from as follows:

“Mr. Lehman: Reading from the minutes of January 14, 1936:

“‘B. A. Helbing addressed the Brotherhood on the value of picket lines at some of the homes being built at the present time. He stated that this was urgently necessary to make the builders and contractors aware of the fact that Northern finish was looked upon with disfavor.’

“The same union minutes, No. 42, June 23, 1936:

“‘Brother Sammet furthered B. A. Helbing's report of the meeting with the mill owners and cabinet manufacturers outlining in detail some of the issues discussed.’

“Reading next from Government’s Exhibit 8 of the same [483] Union 42, the minutes of July 26, 1938:

“Brother Kelly read the new agreement and stated that the East Bay mill owners not wanting to go along with the arbitration award. It was stated that, if the mill owners and cabinet shops in Oakland refused to abide by the arbitration decision, that the cabinet shops and mill owners in conjunction with Locals 550 and 42 in San Francisco would force them to abide by the arbitration award.’

“Minutes of Union 42, October 11, 1938:

“Brother Kelly: The associations in San Francisco want to hold the agreement. Brothers D. Ryan, Muir and President Hutcheson had a meeting with the secretaries of the Mill Owners and Cabinet Manufacturers Association. The reason for this meeting was to protect the shops and mills that pay \$9 against the \$8 scale of P. M. Co.—That is the Pacific Manufacturing Co.—who are at the present time getting all the work on low bids.’

“Mr. Routzohn: We will stipulate the letters P.-M. mean Pacific Manufacturing Co. Where are they?

“Mr. Lehman: In Santa Clara. Continuing with the minutes of Union 42, on October 25, 1938:

“Brothers Cambiano, of the general office, P. M.—that is Pacific Manufacturing—and Redwood Manufacturing Co. will sign new agreements this coming week. Few changes made, P. M. did not want an exempt list. They manufacture all their stock.’

"Mr. Routzohn: Will you stipulate where the Redwood Manufacturing Company is?

"Mr. Lehman: In Pittsburg, California.

"Mr. Routzohn: In what county?

"Mr. Lehman. Contra Costa County.

"The same minutes of Union 42 for November 15, 1938:

"Conference Committee. Brother Kelly had a meeting Tuesday evening in the office of the District Council planning a [484] program for Wednesday night. Wednesday evening meet in the Call Building. There were 14 mill owners and 17 union delegates present. Brother Cambiano acted as chairman. Brother Ryan pointed out that an arbitration clause should be inserted in the agreement for the six counties."

"Continuing from the minutes of Union 42, on November 29, 1938:

"B. A. Wilcox had a meeting with Brother Cambiano and O'Leary and Mr. Edwards and signed an agreement for Oakland. Brother Ryan secretary of District C. of C.—meaning the District Council of Carpenters—refused to sign the agreement. Agreement not satisfactory to San Francisco Mill and Cabinet Association."

"Same minutes for January 3, 1939:

"The committee that was appointed to investigate the ways and means of financing a special business agent made the following recommendation: (1) That an additional business agent be elected to serve until July 1, 1939. (2) That if local union opposed

the recommendation (1), that both business agents be put on a 5½ day week basis and a \$40 per month allowance for auto expenses. M. & S.—meaning moved and seconded—that the report of the committee be concurred in. (Carried)'

"Minutes of Union 42 for January 17, 1939:

"'Brother Kelly reported of a meeting to be held Wednesday afternoon January 8. Brother Ryan secretary of District Council called this meeting for the purpose of presenting the agreement approved by the general office before the cabinet association and Lumber Products Inc. of San Francisco. The Committee of No. 550 and No. 42 should meet and report back to the local unions. We should try to get rid of the exempt list.'

"March 21, 1939:

"'Visitors. Brother Cambiano of the general office [485] appeared before the local and stated why he was here. Reported on the meetings being held with the mill owners and the progress of these meetings.'

"'And concluding with Exhibit No. 6 already in evidence, continuing with the minutes of Union 42, June 6, 1939:

"'Conference Committee. Brother Helbing and Brother Wilcox reported agreement o. k. and spoke about Mr. Edwards and his exempt list.'

"Minutes of August 1, 1939:

"'Conference Committee. Brother Helbing reported the new agreement was sent to Los Angeles for Brother Cambiano to sign. Cambiano is in town

and will not sign until approved by the general office.

"Continuing, from May 7, 1940:

" 'Negotiation Committee met Monday and Brother Cambiano was absent, so Mr. Person and Pierce would not do business in Brother Cambiano's absence. Will meet Thursday and Brother Cambiano will be present.' "

Thereupon, Mr. Tuttle offered the whole of the Redwood Contract in evidence and it was deemed read. (U. S. Exhibit 123-8.)

Thereupon, the following portions (section 35, page 30) of Exhibit 65 from the constitution and by-laws of the Building and Construction Trades Council were read in evidence:

" 'Before a strike can be called against a general contractor fair to union labor, doing an interstate or local business, or any subcontractor doing business for said general contractor, and union conditions prevail throughout, the matter in dispute must be submitted to the president of this department and to the presidents of the international unions involved, before any action can be taken by a local council.

" 'Local councils affiliated to this department shall be prohibited from calling a strike against any general contractor [486] fair to union labor, doing an interstate or local business, to correct any grievance of a jurisdictional nature, before getting the sanction of the president of this department, and that of

the president of the international unions directly involved affiliated to this department.'

"On page 1 it says:

"President Joseph A. McInerney, Washington, D. C.'

"The Court: It seems to me that you could read this at any time later on, if you wish to do so. I do not see any necessity of reading it now. Go ahead and read it.

"Mr. Tobriner: This is from the constitution and by-laws of the Building Trades Council, section 7, page 8: "

"The executive board shall attend to all matters referred to it by the Council. It shall be its duty to make written reports of each meeting of the Council; to formulate the measures and to suggest remedies for immediate and permanent benefit; to act as an executive board in such matters as may be referred to it by the Council.' "

Thereupon, the Government rested.

Thereupon Mr. Tuttle, in behalf of the United Brotherhood of Carpenters and Joiners of America, moved the Court to hold that the Government had not made a sufficient case as regards that defendant, and to dismiss the indictment, or to [487] direct a verdict, as the proper practice might be.

Thereupon Mr. Howard moved for a dismissal, or in the alternative, for a directed verdict of acquittal in behalf of the defendants: The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; The United Brotherhood of Carpenters and Joiners of

America Millmen's Unions No. 42. No. 550, No. 1956 and No. 262; J. F. Cambiano; Dave Ryan; James Ricketts; Charles Roe; Charles Helbing; D. J. Edwards; W. P. Kelly; H. Lidley; W. L. Wilcox; Walter O'Leary; M. D. Cicinato; J. P. Sholden; C. H. Irish; John Doe Smoot, the actual name is George Smoot; Otto W. Sammet; and Emil Ovenberg.

The motion was made upon the grounds that there was no sufficient evidence established to show a violation of the Sherman Act as to those defendants, or any of them, and the motion was made collectively and individually, and upon the further grounds that the evidence affirmatively showed that the union defendants were acting in connection with or as a result of a labor dispute, and that any acts shown in the evidence were immunized by the Clayton Act and the Norris-LaGuardia Act; that the Government has failed to prove the allegations of paragraph 29 of the indictment which referred to the lack of a labor dispute and that the Unions were not carrying on legitimate objectives of labor; separately as to each individual defendant and each Union; that there was the lack of any clear proof that he or it participated in, authorized or ratified any unlawful act; that there was no proof of any unlawful intent on the part of any defendant.

Thereupon the employer defendants moved for a directed verdict and also moved to strike certain evidence.

Thereupon San Francisco Building Trades Council, by Mr. Tobriner, and Alameda Building Trades

Council, by Mr. Todd, [488] joined in the motions to dismiss, or for directed verdict.

Thereupon the motions to dismiss were granted as to each of the following named defendants, upon the ground of the insufficiency of the evidence to convict: United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 262; Eugene S. Elkus, Richard Kuhn, S. Kulcher, H. Lidley, James Ricketts, George Randolph, Joseph J. Schmidt, Henry Schulte, J. P. Sholden, Herman Sichel, F. S. Smoot, D. J. Edwards.

As to all of the other defendants in the case, the several motions to strike from the record certain portions of the evidence to dismiss and for a directed verdict, were denied. All of the defendants were granted an exception to the Court's ruling.

"Mr. Howard: If the Court please, may I call to your Honor's attention one matter. We would feel amiss if we didn't at this time call to your Honor's attention certain applications which were made prior to the trial to abate as to particularly three of the defendants here relative to their Grand Jury testimony.

"Your Honor, since you ruled on the demurrer to those pleas, there have come down two cases, one by our Supreme Court, which I would like to direct your Honor's attention to and which I think is practically controlling with reference to our plea in abatement. For that reason we would like to renew our application to abate as to those three defendants.

"In renewing that application, your Honor, I

think the courts take judicial notice, but we would request the privilege of showing the proceedings which were taken before your Honor [489] in connection with the Grand Jury investigation wherein we moved in behalf of the defendants to quash the subpoenas that your Honor had presented to you as to contumacious witnesses and the three defendants I have in mind, namely, are Dave Ryan, Mr. Helbing and Mr. O'Leary.

"In connection with this application that we are renewing we would very respectfully request the privilege after the courts have considered this matter of introducing that proceeding taken at the time relative to the presentment of those defendants, their refusal to testify, your Honor's direction that they so do, and we would also like as a part of this application the privilege of then introducing the Grand Jury transcript which shows what they actually testified to.

"If your Honor will permit it, I will give you those citations.

"The Court: Well, you have them in writing?

"Mr. Howard: I have the volume of the Supreme Court right here, your Honor, which I can pass to you.

"The Court: You have some memorandum, have you, you wish to submit?

"Mr. Howard: I did not have a written form of memorandum, but there are two cases I would like your Honor to consider in this connection. The one, and the principal case, I would say, is an opinion by

the Supreme Court, *Edwards v. the United States* that is reported in volume 61, Supreme Court Reporter—I can hand it to your Honor.

“The Court: Is that it?”

“Mr. Howard: Yes.

“The Court: That is the record of the case?”

“Mr. Howard: That is the Supreme Court opinion.

“The Court: Well, if you just leave that for me—

“Mr. Howard: And for convenience of the Court, I might [490] hand you copies of those pleas so you can consider them in connection with this.

“The Court: Thank you very much; I will do that, and I will announce my ruling upon that.”

“Mr. Howard: If the Court please, for convenience I will also pass up our copy of the reporter's transcript relating to the presentment of those witnesses.

“The Court: Yes; leave them with the clerk. I will reserve my ruling on the matter.

“Mr. Burdell: Is this a request for a reconsideration of the ruling on the demurrer to those pleas?”

“Mr. Howard: Yes. We are reurging the application for immunity in behalf of those defendants on the same ground we previously urged.

“Mr. Burdell: It does involve now the question of the sufficiency of the pleas?”

“Mr. Howard: That is correct.

“The Court: Judge, did you wish to say something?”

"Mr. Routzohn: The only thing I care to state, your Honor, is that I was not informed as to these pleas and only on Saturday was I advised of what had transpired in the Grand Jury room so far as our witnesses were concerned.

"Of course, your Honor is familiar with what happened so far as your ordering the witnesses back to the Grand Jury room to give their testimony and, your Honor, the information that we had from our witnesses is to the effect that they not only produced the books and records that were demanded at that time by the Government attorneys, but that the Government attorneys after the witnesses had been sent back by your Honor began to propound various questions relative to what had transpired, they went into the history of the case, more or less, and some of the things that have been brought out in evidence here when [491] Mr. Helbing and Mr. Ryan and Mr. O'Leary were present in the Grand Jury room were propounded to those witnesses, so that we feel that the district attorney, or the Government attorneys, rather, went way beyond the authority that is granted to them under the Constitution, and that they even went further than we feel your Honor intended when you remanded those witnesses to the Grand Jury room.

"The Court: Well, as I understood it, Mr. Howard is filing also a transcript.

"Mr. Howard: Well, in connection with this application we ask that privilege, that your Honor consider these pleas and from the standpoint of a plea,

your Honor passed upon it previously as a plea and now those facts as stated by Judge Routzohn, I think, sufficiently appear in our plea, and I have handed your Honor copies of those.

“Mr. Routzohn: I would like to suggest this to your Honor:

“Of course, we are not furnished with a transcript of what took place in the Grand Jury room, but it seems to me that your Honor in order to inform himself would be entitled to a transcript of the testimony in the Grand Jury room, and we would like to have your Honor review that.

“Mr. Howard: Yes, we are making that application that your Honor consider the testimony from the transcript of the proceedings in the Grand Jury.

“Mr. Routzohn: So I would like to add my position to what Mr. Howard stated, I would like to add this is also a renewal of the motions that were made on last Thursday, I think, or Wednesday, for a dismissal of the three defendants, Ryan, O’Leary and Helbing.

“Mr. Howard: We are offering the transcript, your Honor.

“The Court: Very well. We will be in recess a few minutes.” [492]

J. G. ENNES,

called as a witness on behalf of the defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Faulkner:

I am Secretary-Manager of Commercial Fixture and Store Front Institute. Prior to that I was Secretary of the Cabinet Manufacturers Institute, prior to that I was in the actual cabinet manufacturing business for about ten years, in San Francisco. I was associated with Fink & Schindler Company. I went as a representative of the creditors and eventually they paid the entire indebtedness and I bought an interest as one of the partners. I withdrew from that company about six months prior to becoming secretary of the Cabinet Manufacturers, some time in 1933.

The nature of the cabinet manufacturing business that is carried on by defendant cabinet manufacturers, who were members of the Commercial Fixture & Store Front Institute consists of several services and the fabrication of certain material. They have salesmen in the field to solicit work. They make diagrams to show how the flow of customers would be and the relative amounts of space necessary for the merchant's stock. The purpose of the diagram or drawing is to give the merchant a clear conception of how his store would look when completed.

When a cabinet manufacturer undertakes the

(Testimony of J. G. Ennes.)

work, he undertakes all of the work. He would prepare the woodwork with his own mechanics, installation with another group of mechanics, and prepare the finishing with another group of mechanics.

Wall cases are all wood, showcases are part wood.

Thereupon the drawing or illustration was marked for identification defendant's "Exhibit I".

"Q. In connection with the carrying on of that business, [493] Mr. Ennes, what union groups are employed in your business?

"Mr. Clark: Your Honor, that is immaterial and irrelevant. The charge here is that he joined in the combination.

"The Court: Objection is sustained.

"Mr. Faulkner: Q. During the period of time, Mr. Ennes, between 1936 and 1940 did the Cabinet Manufacturers, defendants in this case, have contracts, employer-employee contracts, with certain unions other than Millmen's No. 550 and Millmen's No. 42? A. Yes.

"Mr. Clark: I object to that and move to strike out the answer.

"The Court: The answer may go out.

"Mr. Clark: As immaterial.

"The Court: The objection is sustained.

"Mr. Clark: The question is whether or not they joined in the charge.

"The Court: The objection is sustained, it is immaterial.

(Testimony of J. G. Ennes.)

"Mr. Faulkner: The same general stipulation applies, that an exception goes to each ruling made in the employers' case, that will apply?

"The Court: I have repeated it many times, how many more times do you wish?

"Mr. Faulkner: Does it apply?

"The Court: Yes, it does."

I was acting as Secretary-Manager of Cabinet Manufacturers Institute in the years 1935, 1936. We commenced negotiations with Millmen's Union 550 or 42 in 1935. I do not recall any written contract with the unions prior to 1935. I recall in 1936, there were certain negotiations in which I participated concerning terms of employment of members of Millmen's Union 42 and 550. I signed Exhibit 131, which is the contract of 1936. [494]

The negotiations came about because there was received a communication from the Locals, they wished to negotiate a new agreement, increase wages and things of that nature. It was a letter. To the best of my memory negotiations lasted two months or greater. I attended the various meetings, representing Cabinet Manufacturers. There were in attendance W. P. Kelly, E. H. Ovenberg, Otto W. Sammet, W. C. O'Leary, D. H. Ryan, J. Hart, N. Edwards and myself. Cox came there a bit, and Lennon was in and out. Everyone who signed that agreement participated in the negotiations. Kelly, Ovenberg, Sammet and O'Leary represented Millmen's Unions 42 and 550; Ryan rep-

(Testimony of J. G. Ennes.)

resented Bay District Council of Carpenters; Lumber Products Association by J. Hart; East Bay Mill Owners Association by N. Edwards, Nat.

There were quite a number of problems taken up during the conversations; all of them were more or less interlocked. The principal demand was a demand for more wages and a demand for union conditions. "Union conditions" is an inclusive term, for instance, if you have a Union shop, that goes with it, it would be the use of the Union Label, and the use of the Union Label is a matter which the Unions usually insist upon on a union shop condition. The stamp itself is not controlling with the union, but they would object, they have objections to working on materials which fail to carry that stamp, that is material from other sources; also union conditions take into consideration the questions of safety and sanitation, the right of the men to work in other jobs, other shops that use non-union men.

They cover the matter of apprenticeship training as a movement of the craft.

Other things were considered and debated at the negotiations. The question of the apprentices. The apprentice is a source from which we ultimately get our journeymen mechanics and they arranged a ratio, which in this case happened to be [495] one apprentice to four journeymen. The unions took the position that the employers were using the apprentices for cheap labor; that we were not re-

(Testimony of J. G. Ennes.)

quiring the apprentices to work at the various parts of the craft or trade and that the using of so many apprentices was preventing journeymen from finding employment because the apprentices were doing the work. They claimed they had many men on the street and they wanted to modify that ratio. We finally agreed that we would, although not changing the contractual relation, we would modify certain abuses of which they complained and try them out and see if they wouldn't work out. We were able to hold the same ratio. They insisted that the employers cease to displace the employees that they claimed we were when we were working with the tools of the trade. We got that settled by agreement as to whether any employer could work with the tools of the trade without being an employee.

We have a very liberal interpretation of the hiring arrangement. We do not have a hiring hall directly. We can employ any man we see fit, and after we keep him in the service a certain length of time, he joins the Union. They took the position we were employing men who drifted in here, letting the old men available in the vicinity, wait around. That caused us to have what we claimed was the setup of a hiring hall. We insisted very strongly we didn't want a hiring hall, we wanted to be free with our own choice. We ended up by agreeing not to change the contract.

They also took the position there were many

(Testimony of J. G. Ennes.)

men in the shops that were old and couldn't do hard jobs, that we should select jobs they were capable of doing and keep those men employed. We countered with the proposition they couldn't turn out the work and we believed there should be a lower rate.

✓ We finally got the question of millwright work adjusted, that is the work of actually adjusting the machines. [496]

An argument came up about shop stewards not being known to us, so we got it down into the permissive form. Then the question was when we were going to have arguments, how were we going to be able to get interpretations and set up a so-called conference committee. Then the question was about work in process while we were carrying on this argument or conflict. The employers had to know how to bid on work which was going to be coming up. We had an agreement on the work which was taken during this debate or conflict and the rate that was going to be paid.

Then in the matter of wages, that consumed considerable time because there was no real flat declaration of just how much they wanted. They kept comparing it to other crafts and other trades and comparable rates and bringing up all kinds of data to show that they were much abused, the rate was low, and hod carriers were getting so much and various other mechanics were getting this, that and

(Testimony of J. G. Ennes.)

the other thing, and we battled that back and forth, and then they announced a thought there that we hadn't had to deal with before. Before this, we had what was known as the American plan or open shop. They brought out the point that they wanted us to agree to use union-made materials. They argued that it was to our interest as much as it was to theirs, and in the final analysis if we didn't come to that mind, the first thing we would have, we were going to be faced in our own community with the CIO setup and then we would have it where they were working on a craft basis and the others were on a trade and they would be running all over the place doing this, that and the other, and we made an agreement we were going to use union goods. They put it flatly, if we didn't get [497] union-made material, and so forth, that they weren't going to work on it, that there was right here in the area material—we would bring it into our shops and we were. I don't think the word was "debauching," but it was about the same thing, we were doing a little bit of work on this material and, therefore, the material was gaining the stamp and these employees, the public had no idea that it was produced not under union conditions, whereas as a matter of fact it was produced under conditions which were not union conditions.

On the request of the Union that the employees; as a condition of employment, only work on union goods, I took the position on behalf of the cabinet

(Testimony of J. G. Ennes.)

manufacturers we would do nothing of the sort, we were going to maintain the conditions that had obtained to that time. There were many more words said, but that was the substance.

We maintained that position around two months we were working on the contract. We approached the matter that it was not feasible and it just couldn't be done. Mr. Sammet, a worker at Ostlund & Johnson, was the only member who was a cabinet man. I said to Mr. Sammet, "You know, as a practical man working in the trade and cabinet shops, you can't find any magnolium carrying a stamp that was produced by niggers down in the deep South, they don't know what the A. F. of L. means." I went on showing them it was impossible for us to be bound by any such arrangement.

It appeared to me that the Union was trying in one leap to gain more than they were entitled to:

Sometime after a 1917 contract turned up in the meeting and when I saw that contract I saw the list, and it was apparent to me at once, as a practical cabinet shop man, that that list was not expansive enough to take care of our requirements. I added certain items which I presumed would more or [498] less affect my own conditions. I added dowels, panel stock and stock panel, veneer, machine carved, pressed or embossed moldings.

I wrote the paragraph reading: "Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed

(Testimony of J. G. Ennes.)

state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws."

Every item of material that the Cabinet Manufacturers use is covered by the language, "Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any Buyer."

At the time of entering into the contract we discussed about the cabinet manufacturers doing work for the Federal Government. I brought up the point we had bank jobs and I didn't know where things were going to come from, and I had to be in a position to serve any job, and also post offices.

I had discussion about the Interstate Commerce carriers. I stated that we handled a lot of work for railroads, restaurants, seats, and things of that kind, and we weren't going to be bound by anything like that. I told them I once had appeared as a witness before the Federal Trade Commission on whether Philippine mahogany was mahogany or not, and that the commission had a habit of shifting itself around, one day it was one thing and the next day it was another, and I wanted to be sure I didn't get caught on that end of it.

I had a discussion about the Anti-Trust laws. I pointed out we were going to enter into a contract

(Testimony of J. G. Ennes.)

whereby we were restrained from interfering with antitrust regulations.

In 1936 we finally arrived at the agreement that contained paragraph 16 that has been read in evidence. There is not a single article of lumber products used by a cabinet [499] manufacturer that is not contained on that excepted list and the additional sentence in the concluding paragraph.

The rates and wages on two types of journeymen millmen was fixed in this agreement. Cabinet men do not employ both types; they do employ the type other than the stock sash and door workers. The lower rate, fixed for them, 82½ cents. The higher rate of 92½ cents is fixed for the ones we employ. As I recall \$7.20 per diem was the rate of wage in existence before this contract was entered into, before it was 80 cents, so there was a dollar a day raise.

Terms of employment of the millmen of 550 and 42 were changed by the 1938 contract. During the period from 1936 to 1938 I never had an oral agreement of any kind, character or description with any labor officer or employee on the question of keeping any merchandise out of the City of San Francisco. From the period of the negotiations that led up to the agreement in 1936, until the return of the indictment in this case I never discussed with any union agent the matter of keeping out any material from the San Francisco Bay Area.

In the period from 1936 until the date of the re-

(Testimony of J. G. Ennes.)

turn of the indictment in this case there was no stoppage of anything coming into our shops. There was never a request made on me and any member of the Cabinet Manufacturers Institute to buy material from any particular person, firm or corporation by a union member. That subject was never discussed between me and those union men.

I know the general sources of the lumber materials used by members of the Institute during the period covered by the indictment. I know that certain soft wood comes from the Northwest, Redwood comes from California, and certain of the White pines from California; certain kinds of hardwood come from the South and certain kinds from the North. Mahogany comes [500] from outside the United States, Philippine mahogany from the Philippines, and vermillion from Brazil. In general with the hardwood grades we prefer the hardwood grades that do not come from the State of California. Oak is not sometimes identified as to where it comes from.

I know whether during the period covered by the indictment soft wood produced in the Northwest came into the cabinet shops in San Francisco. I know of no instance where there was any effort to stop the movement of any of this lumber either from the Northwest or the hardwood lumber that was going into the cabinet shops in San Francisco.

I received "U. S. Exhibit 61-48", or a communication identical with it.

(Testimony of J. G. Ennes.)

Thereupon such exhibit was read as follows:

"Mr. Faulkner: This is from the Bay Counties District Council of Carpenters. It is dated April 11, 1938, and is addressed to Mr. J. C. Ennes, Secretary, Cabinet Manufacturers Institute of California, Northern Division, Mr. F. S. Spencer, Chairman Lumber Products Association of San Francisco, Mr. D. N. Edwards, Chairman East Bay Mill Owners Association:

'Gentlemen:

'The agreement now in effect between your three associations and the Bay Counties District Council of Carpenters Millmen's Local Union 42 of San Francisco and Millmen's Local Union 550 of Alameda County, stipulates (paragraph 24) 'it shall be subject to change, modification, or termination by either party (after June 15, 1938), upon 60 days notice being served in writing upon the other party.'

'In accordance with the provisions we have quoted, you are hereby officially notified that the Bay Counties District Council of Carpenters, acting both for the District Council of Carpenters and for Millmen's Unions 42 and 550, all signatories to the [501] agreement, that it is our desire and request that certain changes be made in our agreement.

"We are making our request at this time so that we may have ample time to arrive at a mutually satisfactory adjustment of the present agreement before June 15, 1938.

(Testimony of J. G. Ennes.)

"May we respectfully suggest, in order to promote the establishment of conditions of employment in Santa Clara County and Contra Costa County identical to the conditions that may be established in the San Francisco Bay Counties, that you invite representatives of the employers in these two adjacent counties to participate in the conferences in the establishment of our new agreements. We are referring specifically to the Pacific Manufacturing Company of Santa Clara County and the Redwood Manufacturers Company of Pittsburg.

"We ask that our representatives be afforded an opportunity to meet with representatives of your organizations at your earliest convenience.

"Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS,

D. H. RYAN,

Secretary."

After the receipt of that communication I soon thereafter resumed negotiations with the Union men. That continued up to the time we put the thing into arbitration. The hours, wages and working conditions were specified in the instructions to the arbitration.

Judge Johnson was the neutral arbitrator and the representatives of the employers' side were Anderson and Hart, and on the employees' side, Ryan and Kelly.

(Testimony of J. G. Ennes.)

Certain portions of the dispute were negotiated and agreed to without arbitration. I was a signer of the agreement of July, 1938. In the 1938 negotiations W. P. Kelly, W. L. Wilcox, A. W. Edwards, W. P. O'Leary, E. H. Ovenberg and C. H. Irish represented 42 and 550; D. H. Ryan represented the [502] Council, Carl Warden and Hart represented Lumber Products Association, and I the Cabinet Manufacturers. Stair builders did not have a representative.

Matters that were referred to the arbitrator were the rate of wage, the hours and the effective date, as set forth in that letter. The remaining pages of the 1938 contract were negotiated.

I think there was a change in the holidays and other things were substantially the same. A majority of the provisions of the 1936 contract were carried into the 1938 contract and there was arbitration of the wage dispute. The negotiations were in the Auditorium in the Call Building. The men named participated, subsequent to the letter and prior to the arbitration.

There was a question raised as to taking materials and changing them, or working on them, and they said they did not mind the material being purchased and sold but they did not intend that they should be modified, thereby gaining the stamp. The Union said the items on the list not requiring any stamp were being taken by the employers and modified and they were not willing; they were not

(Testimony of J. G. Ennes.)

concerned as to the use, as long as they were not compelled to work on them. They merely stated it was being done, they did not state what employers did it.

That in substance was the extent of the negotiations over paragraphs 17 and 18, otherwise it was carried into the 1938 agreement in substantially the same form as in the 1936 agreement. I never appeared in the arbitration.

I am familiar with Paragraph 2 of the 1938 agreement, reading:

"It is the unanimous decision of this Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interest of the community [503] in aid of the maintenance of fair working conditions that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be working contrary to the conditions of said agreement."

In none of the negotiations or discussions of the terms of the 1938 contract did I discuss that paragraph in conjunction with paragraph 17. I know the facts substantially under which that provision came into the 1938 contract. I prepared the letter marked Defendant's "Exhibit J".

Thereupon Exhibit "J" was introduced in evidence and read as follows:

"It has on top "Lumber Products Conference of

(Testimony of J. G. Ennes.)

San Francisco, 441 Call Building, San Francisco.

July 12, 1938.

"To the Honorable, Walter Perry Johnson, 111 Sutter Street, San Francisco,

"Dear Sir:

"Messrs. Anderson, Hart, Ryan and Kelly have concurred in the following wording, subject to your approval, and ask that you be advised to that effect:

"'It is the unanimous decision of this Arbitration Board that it would be to the best interests of the community that the parties to this agreement refuse to handle any material coming from any mill or cabinet shop that is working contrary to the conditions of this agreement.'"

"They await your pleasure.

"Very truly yours,

"LUMBER PRODUCTS CONFERENCE OF SAN FRANCISCO,

By J. G. ENNES,

Secretary."

"And in the left hand corner, Carbon Copy to Mr. Anderson, Mr. Hart, Mr. Ryan, and Mr. Kelly."

The title "Lumber Products Conference of San Francisco" means that at the time of the demand there were [504] a certain number of Associations which had been served with demand by organized labor and there were a number of non-members of trade associations who had likewise been served,

(Testimony of J. G. Ennes.)

and so as to face organized labor with a degree of solidarity we named a meeting by that name. In other words, there were certain trade associations, plus a number of so-called independent shops who were faced with the same issue that we were faced with. We set up that name saying we were going to handle our labor negotiations and made that quite clear to Judge Johnson in our memorandum, telling him who they were.

In the negotiations of 1938 I represented Cabinet Manufacturers. When I signed this agreement I was not employed by Lumber Products Conference, that was a voluntary act for my group. The letter was sent to Judge Johnson. I prepared it at the instance of the members that were seated on the Board, that is, Hart, Anderson, Ryan and Kelly. I did not participate in the arbitration matter at all by personal appearance before Judge Johnson.

Language similar to that of the letter of July 12th came into the agreement sometime in July, 1938. Subsequent to the agreement of 1938 the matter in that letter was a matter of dispute and argument in this community. Controversy broke out between the various parties as to who was going to be bound by the arbitration agreement. The Oakland group negotiated, but when it came to actually signing and committing themselves to be bound by the arbitration, they withdrew from the meeting and took the position that they were not going to subscribe to that arrangement.

(Testimony of J. G. Ennes.)

When I prepared the letter of July 12, as Secretary or scrivener, the members of the arbitration committee stated what they wanted contained in the paragraph I wrote. They stated they wanted to see to it that this area was on a uniform [505] basis. They stated what they meant by this area on a uniform basis in particular reference to causing Oakland to pay the same rates. The rate of wages in the 1936 agreement applied to four counties; everything under the jurisdiction of the Bay Counties District Council of Carpenters.

Lumber Products Association of San Francisco was a San Francisco group; East Bay Mill Owners Association were mills in Oakland and somewhere in Contra Costa County. The Mr. Edwards who signed for East Bay Mill Owners was the same who declared he would not be bound by the arbitration award that was pending before Judge Johnson.

It was common knowledge that the rate of wages at \$8.00 in the 1936 agreement was in existence in Oakland at the time Judge Johnson fixed the award at \$9.00 a day in San Francisco. I knew in 1938, at the time I prepared that letter, the wage scale under the contract signed by the East Bay Mill Owners was \$8.00 a day and that that was the amount of wage paid by the San Francisco employers of men belonging to those two unions. I did not know at that time what change was made as far as the San Francisco group was concerned

(Testimony of J. G. Ennes.)

by Judge Johnson's arbitration, it had not been made as far as I know. Immediately after there was a change made as to the wages of the San Francisco group by the arbitration to \$9.00. It applied to all employees of 42 and 550, and all employers who had been bound by the agreement.

The East Bay group were not parties to the arbitration which fixed the \$9.00 rate. At the time I prepared the letter Messrs. Hart, Ryan, Anderson and Kelly said they anticipated there was going to be trouble in bringing Oakland into line, and steps had to be taken to see that this thing was applicable throughout the area.

The paragraph I prepared in the letter of July 12, [506] brought the Alameda employers into line because 550 was bound to work for the same rate that was established by the Arbitration Board. Local 550 is in Oakland and Local 42 is in San Francisco, and both unions were bound by the arbitration agreement. Both 42 and 550 are employees of organizations belonging to Bay Counties District Council of Carpenters. They have always maintained a uniform scale throughout the area and were bound not to work for anything less than that minimum of \$9.00 a day. Mr. Edwards' members were paying \$8.00.

In San Francisco we made a token payment of \$9.00 and I then notified organized labor that unless Oakland was going to pay the same rate that we were going to break the scale and step back to

(Testimony of J. G. Ennes.)

\$8.00. We were holding \$1.00 and making out two checks, \$1.00 and \$8.00, and that developed a serious breach between us and the entire labor which was referred to the attention of the Associated General Contractors. They called a meeting of the B.T.E.A., to which my group belonged through me, and also the millmen of San Francisco belonged. They called a meeting, and in the meeting was Mr. Hart, myself, Mr. Hilp of Barrett & Hilp, who, I believe, was president of Associated General Contractors, and Mr. Ryan, I am not sure about Mr. Kelly.

This was not the meeting referred to in the direct examination of Mr. Hilp and Mr. Hague. This was a meeting of the Building Trades Employers Association. Hilp and Hague referred to a meeting of Associated General Contractors dealing with the same subject matter. This meeting was the Building Trade Employers Association, the group that Mr. McNally was called as a witness about and identified a lot of minutes. This was a meeting of the A.G.C., the big contractors, and the Associated Home Builders who take care of all the F.H.A. work, meeting with labor present.

I recall a meeting occurred about July 25, 1938. I recall saying at that meeting, "We believe the arbitration has [507] been made and the wage must be lived up to." I recall making the statement, "San Francisco does not differ from Oakland materially and we favor arbitration; we don't want to 'hit the streets.'"

(Testimony of J. G. Ennes.)

I pointed out it was impossible for us to pay a rate different from Oakland and we were probably going to have a problem unless the provisions there which labor had entered into were lived up to, unless they maintained that rate and we didn't want to see the men hit the streets, but we certainly weren't going to be put in a position of paying a rate higher than Oakland. That was the general subject matter discussed with the General Contractors and labor men in that meeting, and is the reason the meeting was called.

Thereupon three pages of notes, from which Mr. Faulkner read, were marked "Defendant's Exhibit K" for identification.

It was thereupon stipulated, that in the rough minutes that Mr. Hague made, the following are the only notes in which Mr. Ennes appears: "We believe the arbitration has been made and the wage must be lived up to." "San Francisco does not differ from Oakland materially, and we favor arbitration. We don't want to 'hit the streets'".

"Mr. Howland: If your Honor please, if I may interrupt at this time, in connection with the application made to your Honor this morning I wish to offer in evidence now the record of transcript of the proceedings that were had before the Grand Jury in connection with these three witnesses, Mr. Helbing, Mr. O'Leary [508] and Mr. Ryan, and separately what is part of these proceedings the statement made by those three defendants relative

to their testimony and their immunity, and, third, the transcript of proceedings taken on the motion to quash subpoenas, and with reference to the presentment of these witnesses to your Honor and their direction to testify, a copy of which was handed your Honor this morning. We wish to make that offer in evidence so that it will be before your Honor.

“Mr. Burdell: We would object to that. We have no objection to your Honor’s consideration or the introduction in evidence for that matter of the proceedings taken before your Honor with reference to the question of contumacy of the witnesses, but we would certainly object to the production in evidence or the production in any way of the transcript of the proceedings before the Grand Jury. Our objection, of course, would be based upon the traditional ground with reference to the secrecy of the Grand Jury, also upon the ground that your Honor should not be required to examine that transcript to determine this question, but that the question should be determined in the ordinary way, that is, in a separate proceeding, and that counsel should be required to make that showing in the proper plea.

“Mr. Howard: That is why we are making this presentment, we are presenting it to your Honor.

“The Court: It has been passed on once.

“Mr. Howard: It was in connection with a plea, but we are offering this under this presentment

from the standpoint of evidence as well as our plea. If there is any question of secrecy we are not seeking to look at the transcript, we are offering it to your Honor.

"The Court: Yes.

"Mr. Burdell: It seems to me that is a question of fact that Mr. Howard is raising here, when as a matter of fact there [509] is no question of fact, and no question of fact raised by any plea of any sort. The only plea on file is a plea to which the demurrer has been sustained.

"Mr. Howard: It is understood that we are proving and presenting it to your Honor.

"The Court: I will reserve my ruling on that. You may proceed."

J. G. ENNES

testimony resumed.

The cabinet men were members of the Building Trades Employers' Association. The 1938 arbitration and agreement was a subject discussed by the Building Trades Employers' Association.

The matter of the situation presented by a \$9.00 award to the Millmen's Union of San Francisco as distinguished from an \$8.00 rate of pay in Oakland was discussed before the Building Trades Employers' Association. I am a member of that Association. It is composed of the various elements of the employer trades associations and various elements of the employee associations whose objectives

(Testimony of J. G. Ennes.)

were to maintain industrial peace within the construction industry. It is a voluntary organization. [510]

"U. S. Exhibit No. 161" is a letter of mine addressed to the Building Trade Employers' Association. The meeting to which I referred followed that letter. In the letter I call attention, representing the Cabinet Manufacturers Institute of California, to the subject matter of the arbitration award of 1938, and particularly to the provision that it was the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interests of the community and in the aid of the maintenance of fair working conditions that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be working contrary to the conditions of said agreement.

My understanding is that the meeting came about pursuant to that letter. Mr. Hilp of Hilp & Barrett, was the General Contractors' representative at that meeting, and also as a witness here. Mr. Bernhart represented Associated Home Builders, and the other people that take care of F. H. A. projects were there. I was there, and Messrs. Hart, Ryan, Watchman, Ricketts and Supervisor Dewey Meade. Mr. Hilp said he called the meeting because the position taken by the mill owners and the cabinet own-

(Testimony of J. G. Ennes.)

ers organizing to break the rate would no doubt bring about a disastrous condition in the community and they wished to avert that, and was sure something could be done. We maintained our position we could not pay \$9.00 on this side and have Oakland pay \$8.00, and then have the general contractors go over there for materials and the mill owners go for their materials to Oakland, and having the customers go to Oakland where they could get it cheaper. Mr. Bernhart probably turned the tide; he pointed out that they had a lot of F. H. A. houses partially built and if there was a strike in San Francisco considerable damage was going to be done to the reputation of the industry [511] and to these people, who had leased their rent or place of occupancy because they would have a double burden by paying on both ends at the same time, and so far as he was concerned he was going to give us a breathing spell, and any place in which he was doing business he was going to continue doing business even though he recognized it was going to involve additional expense, that he was going to absorb it. Mr. Hilp concurred. Then Mr. Ryan expressed himself that if a reasonable opportunity be given he thought they could straighten that question out. I asked him what he meant by "reasonable opportunity", what do you mean in time? And he designated a time, and it was too long in our opinion. We then suggested if he would name a time we would then escrow the \$1.00, and then proposed a committee of three but the escrow did not

(Testimony of J. G. Ennes.)

work out, and eventually I put the proposition this way to Mr. Ryan, I said, "All right, under this contract, we have lived up to it, we have paid \$9, and we have done everything we know what to do, if there is anything going to be broken, I am not going to have you say to me that I broke the rate." He made that reference before in connection with the breaking of the rate that I will have to admit, it was in connection with the Industrial Association, we did break the rate, and he had referred to that, and I said to keep in the clear you are going to put something on the dotted line, and I prepared then a rough letter in which I said in substance, I do not think I have heard it here, but it said in substance that unless the matter was taken care of in paragraph 19 after such and such a date that that would be evidence of their breach of the contract. I signed it then and there, and as I recall Mr. Hart either signed it or initialed it, and Mr. Ryan signed his initials, and we went out from there and everybody felt that we had the solution of the problem.

This situation involved both cabinet men and the [512] mills because we both operated on both sides of the Bay. Some merchants have business on both sides, also our men work on both sides. We had men that worked in San Francisco and belonged on the Oakland side. These locals in the Bay Area work in harmony as to exchange.

The general contractors purchased material from the Cabinet manufacturers very seldom. We usually fabricate our own and installed it; where they usu-

(Testimony of J. G. Ennes.)

ally did the installing and did not fabricate. If they needed something they would come to us, but not much.

The cabinet manufacturers were tied into this matter of the Millmen's Union with operators of planing mills, because in this particular city there is no distinction in the union position between its employees which work in the cabinet shop and those who work in the mills. Anything that might affect 42 or 550, faces the same labor situation.

I think an intelligent estimate of the members of two unions, 42 and 550, employed by the cabinet industry, as distinguished from millwork industry, would be about 15 per cent. I have not actually placed the figures together.

In July of 1938, when these matters were in progress, labor was still employed in Oakland on the \$8.00 rate, in San Francisco we were paying \$9.00 to the men, but we had \$1.00 paid to them endorsed back to us, we still had our hand on it, intending to keep it, unless the rates were adjusted properly.

Soon after this letter went out and the date arrived which we specified, a strike occurred in Oakland. Later, after the arbitration award and agreement, and this discussion with the general contractors, an agreement was reached fixing a wage scale other than \$9.00.

"U. S. Exhibit No. 175" is an agreement which adjusted the wages from \$9.00 down to \$8.50. Mr. Edwards stated that he would enter into such an agreement, and to common [513] knowledge they

(Testimony of J. G. Ennes.)

were paying the same rate, \$8.50, at that time. Effective October 18, the rate was reduced to \$8.50 in the six counties, one was reduced, the others were raised. \$8.50 a day was the rate that was paid after that agreement had been arrived at. The Oakland — The Transbay group likewise paid \$8.50 and the strike was lifted.

We did not renegotiate all of the paragraphs of the 1936 agreement in 1938. All the paragraphs were not reenacted exactly in the original form, there were slight changes here and there. The discussions were mild up to the point where we got to settling the rate and then I would say they were rather hectic.

I don't recall any other meeting subsequent to the agreement effective October 18, when representatives of the employers, that is the Cabinet Manufacturers and Lumber Products Association, met with members of the Union in 1938.

I signed the letter which is Exhibit 133 in evidence. This letter was a check-up that I wrote to see whether in fact that agreement was an agreement. There was some question as to whether or not organized labor had done certain things in connection with ratification of this. I was writing the letter asking for confirmation. The purpose of the letter was to confirm both of the contracts, being Exhibits 175 and 132. I got an answer to the letter in writing; I don't know where it is. It was rather garbled, in my opinion, my expressed opinion.

Thereupon Exhibit 133 was read as follows:

"This letter is on the letterhead of the Cabinet

(Testimony of J. G. Ennes.)

Manufacturers Institute to the United Brotherhood of Carpenters and Joiners of America, Union No. 42:

'Gentlemen:

"Our shops are operated under the terms of a negotiated and arbitrated Agreement which Agreement was subsequently modified at the suggestion of your International Officers, your [514] local representatives being present, and concurred in by us in the following language:' — Then comes language purported to be taken from Exhibit No. 175 which we have read in evidence and it quotes the language of Exhibit 175 and the letter then goes on to say:

'In spite of the affixed signatures and statements of those who asserted and we believed to represent you, we have heard that there exists some question as to Organized Labor having followed the proper procedure with respect to the contracts.

"We are hopeful that the long established confidence we have in your organization and its officers will continue to obtain. So there can be no misunderstanding arise, please advise us in the premises.

Very truly yours,

CABINET MANUFACTURERS
INSTITUTE OF CALIFOR-
NIA INC., NORTHERN DI-
VISION

By J. G. ENNES, Manager.

LUMBER PRODUCTS ASSO-
CIATION INC.

By H. W. GAETJEN."

(Testimony of J. G. Ennes.)

In 1938 there was not any oral agreement ever entered into by me on behalf of my Association of any kind, character or description with any representative of Organized Labor, concerning the keeping out of any materials used by the cabinet industry of any shape, manner or form. I was not connected with any oral agreement of any kind, with any mill owner in which there was an agreement to keep out any material moving in Interstate Commerce or in any other manner in this district.

In the year 1938 I recall where a representative of Union Labor was auditing or checking the accounts of the Cabinet Manufacturers Institute with respect to the application of a wage scale change of jobs on hand. I wouldn't say how long that checking continued. [515]

"U. S. Exhibit 11-1" is a letter addressed to Millmen's Union No. 42; that is my signature. I did not prepare it but I signed it. (Request for additional Business Agent). I joined in the request for another Business Agent or having a sufficiency of Business agents.

There were two problems which the Cabinet Manufacturers referred to. One problem was that there was a breakdown of the rate of wage. The other problem was the chiseling on the adjustment made between old work and new work.

In the case of chiseling I am afraid it was the employers doing it. In the case of breaking down the rate, I would say it was a kind of joint affair,

(Testimony of J. G. Ennes.)

the employers and the unions. In the 1936 agreement, unfortunately a serious problem came up which also was to the discredit of the employers. It developed some very harsh talk in the negotiations. In that case we had labor handing back sums of money as an adjustment, and that was the reasonable way to do it, and I knew that unless we got the thing straightened out it was going to come up at our next negotiations, so I wanted to take care of it at its source and to get something straightened out to take care of it before it got worse. The business agents would do that; they would usually go right into the place and check it on pay day, or something of that sort, catch either side that tries to get off.

I mean by chiseling on the rates when times are slack and men are hungry for work, arrangements are made between employers and employees to do work for a lesser rate. Employees that have been there a long time sometimes make those little adjustments on the side, but if one firm finds out the other is getting away with it that means a kind of caving in of the whole system.

In December, 1938, the 12 members of the Cabinet [516] Manufacturers Institute were not the only people engaged in the cabinet manufacturing business in San Francisco. I would say, taking the phone book as an index, there were probably as many as forty; I don't know for a fact that they all had the identical contract that my group had.

(Testimony of J. G. Ennes.)

The Business Agents of the Unions made the statement that some of the forty other cabinet makers in this community had the identical contracts that had been introduced in evidence, in which the Cabinet Manufacturers Institute is a party.

As far as the cabinet manufacturers were concerned, they were the members of my own group and had additional men all operating and participating in the same wage rate. I presume the Business Agents would check everybody in the cabinet industry because the rates are uniform for everybody working for 42 and 550, that includes all of the planing mills here; their rates likewise are the same. They were being chiseled on and that is why I wanted the Business Agents to go in there.

Exhibit 146, signed Employer-Employees B. C. W. P. Labor Conference Committee means Employer-Employees Bay Counties Wood Products Labor Conference Committee.

That is a copy, but I do know I signed that letter. I do not know whether the paper I signed was on the letterhead of the Bay Counties District Council of Carpenters. I did sign a letter which the Government has introduced here substantially the same as this one.

The facts surrounding the signing of a communication of that nature were that Nat Edwards of Oakland called up and wanted a meeting of this Conference Board, which was what we would call a beef committee in the industry. If we had any

(Testimony of J. G. Ennes.)

trouble we would take it there and they would wash it out. It is a conference committee of both employers and union members. It is set up in the contract. He asked whether it would be [517] convenient to meet in the office and I said sure. They then got down to the discussion on that word "T & G". That is understood for tongue and groove, and he had some idea that they ought to be more clearly defined, and he then roughed out the definition of what he thought it ought to be, with the Vs and beads and all that, profiles and so forth. I drafted it up and got it wrong the first time. I was acting as Secretary for the meeting. I revamped it at his suggestion and then we sent that to both parties, so all people having a contract could be advised of the definition of that term "T & G". At the time I was sitting in the meeting I was representative of Cabinet Manufacturers Institute; I was acting secretary of the meeting.

The cabinet men use flooring in small quantities; sometimes they bring it in in carload lots and sometimes they need a small quantity and buy it from the local vendor. Cabinet men use T & G, sometimes bring it in in carload lots and sometimes for small quantities get it from the local vendor.

There was not any instance where a question ever arose as to the right of cabinet men to bring in either flooring or T & G from any source or any place that they desired. There was not ever a discussion in the entire time I was carrying on these

(Testimony of J. G. Ennes.)

negotiations for the cabinet men with any union representative about bringing in any lumber material outside the State of California, or outside the Bay Area into this Bay Area for cabinet manufacturers. There was never a request to me that the cabinet men buy their lumber material from any particular firm or corporation. The only thing that might approach that is the one time certain hardwood merchants indicated they wanted certain business; there is a letter to that effect. They were local people and wanted to get business from the members. The hardwood these men handled came from outside the State. That was a matter of one group getting business from [518] another. Probably some of the Oak which grows in California came from inside the State, but in general the hardwood purchased by the Cabinet Manufacturers Institute comes from outside the State because it isn't a hardwood state. I never received a request from any Union Official of any kind that the members of my group buy only products from a local San Francisco planing mill or Oakland planing mill or planing mill operating in the San Francisco Bay Area.

In 1939 I participated in the negotiations leading up to the contract No. 69, in evidence, dated August 10, 1939. None of the cabinet manufacturers attended any of the meetings with Organized Labor held in 1936, 1938 and the one in 1939. No one representing Mullen Manufacturing Company appeared at any of the negotiations that I refer to

(Testimony of J. G. Ennes.)

with organized labor; that was taken care of by me. That is also my answer with reference to Ostlund & Johnson, L. & E. Emanuel Company, the Unit-Bilt Company, Fink & Schindler, Braas & Kuhn and Mangrum, Holbrook & Elkus.

After the negotiations were reduced to writing I did not send the contracts to the members of my Institute. I never had any contract mimeographed to distribute to my members. I did advise my members concerning the fact I had entered into a contract with Organized Labor from time to time. During the progress of the negotiations I would call them up from time to time and inform them whatever the rate of wages probably was going to be and warn them to adjust their bidding so they would not get caught on the short end. I mean by that, that if the rate of pay was \$8.00, and my guess would be maybe labor was going to go up or get away with \$8.50, I would inform them they better start bidding at \$8.50 because although we had that clause which was supposed to adjust that, sometimes it didn't just work out that way, so it was by way of keeping them advised. As a matter of fact, I am doing that right now. [519]

We are under arbitration and I try to guess what the arbitrator is going to do. Then upon completion of the contract I would call them up and if there was some change, like additional holidays given, I would inform them of that, what the wages were, what the hours were and the apprenticeship scale. That is as far as I went with them.

(Testimony of J. G. Ennes.)

In 1939 I participated in negotiations for that contract. We were able to hold it to the same rate, \$8.50. The lower rate was in proportion, $96\frac{1}{4}$, that is the mill rate, that don't belong to us.

I know Mr. Strong. Some of those shops in question that he mentioned I don't think I did go, but in general I went to the shops he said I went to. I did not go in 1938. The arrangement was in 1938, if anything developed that was not to the satisfaction of those concerned, to give me a call and I would go out and help the matter along. There were differences of opinion between himself and my people, but we eventually arrived at a mutual understanding of any differences that existed. For instance, if the employers would claim a certain number of man-hours and they couldn't support it, labor would take the position it was not supported and they wanted to adjust it downward.

The employer had a contract in existence at the time the wage rate was changed. He was to get a credit for having bid at an old rate and when the problem of estimating the duration of how long it would take came up, that is where the difference came in. The manufacturer would naturally tend to make the estimate longer and the employee the estimate shorter. Mr. Strong audited them and then they came to an agreement.

I met Mr. Wine sometime in the year 1940, a little before a letter was written at his request; I could fix the date by that. The letter of [520] April 10 was written in response to Mr. Wine's request.

(Testimony of J. G. Ennes.)

"A. Mr. Wine made first a call on the phone, asking to fix a date, and that date was not satisfactory, and later we fixed a date; when I got there I was late. I went in and Mr. Wine introduced himself and showed me his credentials, and I said I would take his word for it, and he then told me the Bureau of Investigation was carrying on an investigation that they thought was going to be very helpful to the construction industry, and he understood that I had some matters that I was attending to in the industry, and I was getting around a lot of places, and it would be very helpful if I would tell him about it; he then explained what his mission was, was to find out about certain material held up, and things of that kind. I told him that I did not know of any material that was held up, except by hearsay and rumors, and things of that kind, and I did not think that would be very good testimony, and I then asked him if he had any experience in the construction industry, and he told me no, he had not had any experience on the construction industry. I asked him if the F. B. I. men were not classified according to some previous training on various lines, and he said they were classified along legal lines, and auditors, and things like that, he made it quite plain. Eventually he referred to the contract, which he had with him, and he asked me if I would explain the contract, and I told him that I had not read the contract at all, and he said, "Mr. Ennes, you signed this contract." And I said, "That is my name, but

(Testimony of J. G. Ennes.)

that is not my signature." "Well," he said, "haven't you signed some contracts?" And I said, "Yes, I have signed many times." And he said, "Let me see something that you have signed." And I said, "Well, if you will specify what one you want to see, I will." And he said, "I want to see the Mill Owners contract, and I said, "I have not got a mill contract, I have got a contract [521] with the Millmen 42 and 550," and I went over—we had been sitting at a table, and I went over to the desk and got the contract, and laid it in front of him, and then he interrogated me as to certain paragraphs in there. I said as far as the cabinet work was concerned that did not mean anything, and he said, "If you should tell them that, you are an intelligent man, you are with intelligent people, what would they say?" I said, "If I told them that they would think that was all right, I am the person that is supposed to take care of the labor situation and they do not mess around with that, they just have to sell them, and do them, and collect for it; anything as to labor, I take care of that." And he smiled and said, "You are not a very helpful witness." And I said, "Why?" And then we both swung off on the wrong track, and we went through some small talk, and then he swung back to it a little later on, and I told him I did not know anything about it, again, "I am not going to talk on a subject, I am not going to talk about it," and we then moved over again, and finally it got around to

(Testimony of J. G. Ennes.)

a point where he made a sketch, and he sketched in there a circle of the F. B. I. and various departments, and I said, jokingly, "You do not have to carry a gun, do you?" And he said, "No, we only carry those where they are known violent criminals," and got off on another track, and he eventually said to me, "Of course, Mr. Ennes, I thought you would be very helpful, and you know you can be subpoenaed." And I said, "Yes, I know that, and whenever the Judge sends for me I will come trotting," and then he started off and talked about everything else but what I was supposed to talk about, so eventually he got up and said, "Well, Mr. Ennes, when you get a chance drop down to my office," and I said, "I am not coming down there, don't wait for me."

What I really think was he got off to a false start. I think he was trying to question me about something [522] I was not interested in. He did not seem to get where I stood in the picture. At no time in the conversation did I talk to him about any stoppage of lumber in the industry I represented. There was not any stoppage, he couldn't talk about it. He didn't ask the viewpoint of the cabinet manufacturers beyond referring to that paragraph, unless that is to be so construed. When I told him that mean nothing to my group I don't know what he thought. What he said was, "What would your people say if you told that to them, you are an intelligent man, and they are intelligent men."

(Testimony of J. G. Ennes.)

At the time I brought out the contract that had my signature on it, and that is here in evidence, I didn't tell Mr. Wine that I had never read the contract I produced for him. The contract I said I had not read was the one that he had there. It was in connection with that contract that I had that I told him that a particular paragraph meant nothing as far as my people were concerned.

It is correct that with the subject matter of an inquiry of about whether I knew about stoppage of material I told him I knew it by hearsay and rumor. He did go back to the same subject, referred to something I had told him about that I did not know anything about it. I was subpoenaed before the Grand Jury and testified there. I did not claim immunity.

I had a little flare-up or lack of meeting of the minds with Mr. Wine on the matter of taking notes of what happened there. When he came in he asked my name and things of that nature, and started to put it down. When I saw I was not going to get along too well, I said, "If there are going to be notes taken there should be a stenographer to take them," and I went over to the desk to the telephone and he said something pleasant, he did not seem to bother any more, and when he went to leave, he said "You understand there is nothing personal about it," and I said, "You have got a job and got to do it," and I thought he left quite friendly. He did not tell me at [523] any time that he was investi-

(Testimony of J. G. Ennes.)

gating me and anything that I said might be used against me.

"The Court: Mr. Howard, did I understand you to say this morning that you wished me to file these pleas?

"Mr. Howard: No, I handed them merely for your Honor's information.

"The Court: You have filed the originals?

"Mr. Howard: The originals are on file.

"The Court: You wish to introduce these in evidence?

"Mr. Howard: Yes.

"The Court: That may be introduced in evidence at this time.

"Mr. Howard: Together with the Grand Jury proceedings?

"The Court: No, I am not making any ruling on that.

"Mr. Howard: I understand that, that was our application.

"The Court: If you will just mark that and return it to me.

"Mr. Routzohn: May I have it understood that if the Grand Jury proceedings are not admitted we may introduce oral testimony as to what was testified to?

"The Court: No, I could not give you an understanding as to that now. [524]

"Mr. Routzohn: Will your Honor give us the opportunity to properly present it?

(Testimony of J. G. Ennes.)

"The Court: I will notify you later on."

The group of men consisting of employers' representatives and union representatives, was, I think, set up in the 1938 agreement. I would have to look at it. That group met twice in the entire period. The particular conference group meetings where labor and the employer were both represented only met twice. I refer to one meeting when you handed me that exhibit on T & G. I recall the other. I could not fix the date, but the subject was the matter of the rate and its application. We did not have a formal meeting, it was not the meeting that Mr. Hilp mentioned. The only two joint meetings that the employers participated in were these two that I have referred to.

Cross-Examination

By Mr. Clark:

The first Association I was connected with was Cabinet Manufacturers Institute, Northern California, it was not a corporation. I came with it in 1933. I stayed with it right on through until the incorporation of Commercial Store Front and Fixture Institute. In the 1936 negotiations I was representing the Association and its members. When I was there [525] on that occasion I was representing L. & E. Emanuel, Fink & Schindler Company, Braas & Kuhn Company, Ostlund & Johnson—that is Mr. Oscar Ostlund, and the Mullen Manufacturing Company. Mr. Roselyn was not in the 1936

(Testimony of J. G. Ennes.)

arrangement, I am sure; and if my memory serves me Mangrum, Holbrook & Elkus were not in 1936.

There was not any formal agreement with the members relative to my duties and just what the Association was supposed to do. There were no By-Laws and no Constitution. I was supposed to—I don't know if they even said that to me, but what I did was I took care of all the labor negotiations, I took care of the matter of ordinances, and things of that kind, in the City Hall, I attended various meetings of the Chamber of Commerce and things of that kind; I appeared at the Safety Council meetings. I was representing each one of them on any matter involving labor. I made an estimate here on the stand, there were forty cabinet shops here in San Francisco. There are cabinet shops outside of San Francisco, in California, and outside of the State of California.

Negotiations in 1936 were begun by a letter that came from Ryan on behalf of 42 and 550. I don't know where it is, I had it, I probably destroyed it; I don't think probably, if I did have it I did destroy it. Exhibit 108 is one letter, I sent out. I don't know that I have a carbon; I don't know what I did with that carbon. I have not got Exhibit 11-1. I have not a carbon. When I shifted from one organization to the other I cleaned the records out. I don't know where Exhibit 108 is, I have not got it. I don't know whether I produced Exhibit 11-1, I produced a number of papers. That is my signa-

(Testimony of J. G. Ennes.)

ture on the letter to Millmen's Union about putting on more business agents; I don't have a copy in my file. I did not take the trouble of signing a copy in my own files. When I first came there and took over I destroyed everything at that [526] time, back in 1933. Then I moved from the top floor down below and went in the closet and cleaned up then; then I moved to another office and I destroyed the stuff there. When I shifted from one organization to the other I cleaned it out again. The arrangement with the building was when somebody wanted to come into the room they would move me to some other office, and I took that occasion to dump these out. Every time when they piled up I dumped them out. I am in the office by myself but I have a closet and a file. From time to time when it piled up I just dumped everything out. If it was current I would leave it there, if it was not, I would dump it out.

In jumping from the old organization to the new, the corporation, the members in one were also members in the other. I performed the same duties with the new one as I did in the old, I had the same salary and the same office, except in one case I had no by-laws and constitution and in the other I did have; but for all practical purposes I did for one what I did for the other. It is correct that I kept the bank account of the old Association for over a year after the new one was incorporated, it overlapped. The new corporation used that bank account.

(Testimony of J. G. Ennes.)

Mr. Ostlund of Ostlund & Johnson was treasurer of the old group and of the new. He signed all the checks. Any expense that arose, arose on account of my making it, and I okehed them, and when they would come in they were paid.

Mr. Ostlund was a figurehead. I do not mean any reflection, I mean to say that I did not have a signature of withdrawal, but outside of that whatever I said went. He signed the checks upon my okeh; I would approve a bill and he would pay it.

I dealt with Mr. John Mullen in the Mullen Manufacturing Company in 1936. I reported to him as I have just [527] testified. It was not always a telephone conversation. If I went to the plant I talked to him, if I did not go to the plant I talked to him over the telephone. I don't remember of ever writing him a letter at all.

I dealt with Mr. Ostlund in 1936. I reported my progress to him or I would talk with the bookkeeper if Mr. Ostlund was not there. I would tell him what I had to say, depending upon what I thought the importance of the matter; if it was important I would talk with Mr. Ostlund. I don't recall sending any letters or copies of the contract to him at that time. I did not have any mimeographed copies of the contract prepared, I think the union prepared them. I have some of those. I did not distribute them or take them out, or mail them.

I talked to Mr. Emanuel in 1936, but very seldom; I talked to Mr. McRae. I also talked to Mr.

(Testimony of J. G. Ennes.)

Emanuel on occasions, I would report to him just as I reported to the others.

I dealt with Mr. Stauffacher of Fink & Schindler, or if he was not there I talked with Mr. Munk, an associate of his. I had the same dealings, type of conversation with them. I talked usually to Mr. Kuhn of Braas & Kuhn. I do not recall making any written reports to them at all. I have no records of the old organization.

Exhibit No. 60-7, January 21, 1939, is subsequent to the organization of the corporation. I will furnish a carbon of that letter if I have it. The same for Exhibit No. 60-9. I would not have a copy of Exhibit No. 60-40, it is not mine. I don't know where Exhibit J came from. I could not identify it as a paper coming out of my file.

I remember there was a joint conference committee in 1936. I participated in it. I think Mr. Hart, Mr. Nat Edwards and myself represented the employers. On the other side Mr. Ryan and whoever was the business agent at that time. [528] We had no regular meeting at all. As far as the conference committee was concerned it only met twice. I acted as secretary, there were no minutes and I never kept any record.

In the 1936 negotiations I represented all of the companies but Mangrum, Holbrook and Elkus and S. Kulcher. At the meeting in 1936, were present, representing 42 and 550: W. P. Kelly, Emil Ovenberg, Otto M. Sammet, W. C. O'Leary. Repre-

(Testimony of J. G. Ennes.)

senting the District Council, D. H. Ryan; Lumber Products, J. A. Hart; East Bay Mill Owners, Nat Edwards, and I represented the Cabinet Manufacturers. I don't recall who else were at the meetings. At some of those meetings they would move in and move out. I know Mr. Carl Warden. I don't think he was in the 1936 agreement at all. Mr. Cox was there.

I wouldn't say organized labor had a lead man. They would talk and then they would have differences of opinion and Mr. Ryan was there representing the Council, then these other men, not all but some working with the tools of the trade, and as things of that nature came up, they would get in and talk about them. The meetings were held in an auditorium at the Call Building. I arranged the place for the meetings. Later on sometimes Mr. Gaetjen arranged them and sometimes I arranged them. I arranged the 1936 meetings. When I say I arranged it at times, I don't know whether that is a fact, but I assume I did.

There was no lead-off man for the employers because they could hardly agree among themselves. In connection with voting, they took the position that even though everybody should vote, that anyone would hold it off if they wouldn't vote. The employers were autonomous.

No one was there representing the Cabinet Manufacturers group that I represented in 1936; there was in 1935. I don't recall that any of the

(Testimony of J. G. Ennes.)

cabinet group that I represented had anything to [529] do with negotiations in 1936; I would say No, as my memory serves me. I was there, I remember other details. No one else connected with the cabinet group I represented was present or had anything to do with the negotiations in 1936.

We won our point about apprentices and the hiring hall. Labor, in approaching the labor rate, never comes right out and says this, that or the other. It takes them a long time before they work around to some rate or wage. They usually proceed by comparing it to other rates of wages. They eventually get around and say, "All right, so much money". As I remember that was true in 1936. The rate of wage was the most important subject discussed at these meetings. Offhand I don't remember some of the old rates unless I saw the contract. It was the most important thing discussed, but once settled, it is of no importance to me then.

There was discussion there about all material. There was discussion about Northern material coming in. Both sides, unions and employers talked about that. The discussion was as to our ability to produce certain commodities and comparisons of prices and things of that kind. The effect on the market of the northern material was talked about, and so forth. They weren't going to do anything about it. I am sure we were going to do nothing about northern material. There would be discussions on the subject of the Northern Material and

(Testimony of J. G. Ennes.)

we came to the conclusions that are set forth in the contract.

What was said on that was the effect of inflowing material in this area from every direction. For instance, it was brought to our attention that this area itself was not unionized, was not organized, and old materials were flowing into our shops, that is the mills principally, and in those places we were making it possible to degrade materials by putting the stamp on them after having done about ten cents' [530] worth of work and the idea that they tried to put over there, I think, was to try to say that people in this area ought not to take from some other shop which had a non-union condition their material and degrade it. The stamp is the thing with them, degrade the stamp. We took the opposite position.

What was happening was, material was placed in a union shop. Material produced under this so-called unfair condition in this area; it came from shops in this area. For instance, say you gave a shop that produces some legs under unfair conditions. Those legs would be attached to a table top in a further shop. They would put the label on the whole thing regardless of the fact that the other items were produced under unfair conditions. The unions made the argument we were taking an item, merging it, mixing it, or something else, and then putting it on the market as if it were the product of a union outfit and the effect being that

(Testimony of J. G. Ennes.)

it was detrimental to their interest. They wanted us to stop it.

The exempt list permits the placing of that item between shops or any other place. The cabinet manufacturers don't buy from shops.

"Q. Why did you write the exempt list, then?

"A. I wrote the exempt list, the items on there, because they came from the hands of others and might be designated by the unions as being, maybe, not fair, and so forth.

"Q. From whom?

"A. From shops, from cabinet shops.

"Q. You say they don't use it.

"A. May I have the question?

"Q. I just asked you if your shops, the cabinet shops, don't buy from shops located here.

"A. No, we don't."

Representing the cabinet shops I wrote an exempt list because I wanted to be absolutely certain that in any eventuality, whatever happened, that we were going to be absolutely in the clear and nothing in any way, shape or manner could tie us up. [531] It was the argument, as I understand it on the part of the unions, that it was merely to keep one place from buying from another one here.

In San Francisco one place was manufacturing dowels in 1936; Pacific Manufacturing Company. I don't know any other shop manufacturing dowels. Dowels are on the top of our [532] list. Pacific Manufacturing Company produced panel

(Testimony of J. G. Ennes.)

stock, I believe in 1936. Pacific Manufacturing Company manufactures plywood panels, a veneer, and did in 1936.

I put them in there, as I stated before, to meet any eventuality that would come up, just like I have heard in this Court room many interpretations and I wasn't going to get caught in the clinches. I put it in there to cover this, but I also had in mind it was going to cover any eventuality. I just said I put it in there because the Union was objecting to our shop and other shops buying from non-union places.

That exempt list arose from a condition of 1917, a typical mill situation, mill contract, and I saw it and looked it over and they would think we were trying to put the community back in the shape of 1917, so I added the other items because they were peculiar to my industry. I don't know where the 1917 contract is, it never was in my possession. I had that and added to it the items that were peculiar to our own interests. They were dowels, stock panels, panel stock, embossed moldings, pressed moldings, lumber surfaced and rough, stock doors.

One-panel is a door. It says mahogany, pine, redwood and Philippine mahogany. We use flooring a little. It was manufactured in this community for fourteen or fifteen years before 1936. Siding and clapboard was manufactured then and now. We don't use any sliding. We use a small

(Testimony of J. G. Ennes.)

quantity of T & G. We use very little sheathing. We make up very little flooring, we use very few windows, veneers. Everyone I called off, with the exception of siding and clapboard, I said very few, are the ones we are interested in. I added to the 1917 list. The 1917 list was substantially what you saw on there, minus those top items, dowels, panel stock. Machine-carved, pressed or embossed moldings are not manufactured. I put them on because I explained that in [533] case of any eventuality whatever I wouldn't be caught. Here you are dealing with a group of men who might change their minds. I didn't have any intention of having anything of such kind happen to me.

I didn't put in plain molding because the whole group of cabinet manufacturers, if they consume a year a thousand dollars' worth of it, the whole industry, I don't know what I am talking about.

Machine-carved pressed molding is not made here. I made a statement which was protecting myself. I think I used the words "in the clinches". I never know what the other man is going to do and that is what I did. I was not concerned with the mill end of the game, I am there looking out for myself. I know in general what is the mill end.

A mill would use molding, that is not on the list in 1936. They would use jambs and sash, that is substantially what they would use. Plain moldings would be the seven thousands or eight thousands series stuck molding; that is manufactured in this

(Testimony of J. G. Ennes.)

area. Jambs and sash are manufactured in this area. Quite a bit of those materials are used which come from outside of the State, about ninety per cent.

I was interested in this local exempt list between the local manufacturers because I am interested in anything that has to do with the wood manufacturing end of the game, and I put that in there to protect my interests, and then I put that general clause in there to protect me in any event if there should be an omission, that is, the final clause you see there was in the event any argument should come up I would be in a position to do as I have always done, get the material wherever I see fit, and we have done just that.

I didn't write a separate contract for the reason that we are dealing with the same union right down the line [534] and we are facing the same group of men.

We, in the last negotiations, were assured that the new contract would be as the existing one and we woke up in 1939 and found out that the same kind of a contract did not exist. The Redwood Company got a separate contract because Redwood Manufacturing Company is located in an area outside of the jurisdiction of this area, the same as Pacific Manufacturing. When you get around to 1939 you will find out that is just the position we took, and while you will find some modifications there, when we discussed that, there were differ-

(Testimony of J. G. Ennes.)

ences on which we then agreed, and then we wanted them all alike. We did not ask for a different contract from the mill owners.

I signed that contract representing the people that I testified I represented in 1936. I copied paragraph 16 where I thought it was necessary to protect my interest, and then I took a further precaution and added a later clause. I added the first part of sixteen in general from the 1917 agreement I referred to. It wasn't in that original form and it probably went through, six or seven different changes. I don't know who originated it.

I was very much interested in getting me out from anything that would harm my group. Organized Labor took the position we were degrading the stamp and they were trying to get it back into the position it was before the town was reasonably organized, that is where the restrictive clause starts from. Then I wrote the last part of 16, which is the "nothing herein" clause. I said I had appeared before the Federal Trade Commission. That was a case here in Philippine mahogany; that was several years before 1933. I was with Fink & Schindler Company at the time. We had used a lot of Philippine mahogany and they asked me to appear there and testify on a change of the name.

From time to time I received memoranda from the Federal [535] Trade Commission, I think it was on changes, the standardized nomenclature and things of that kind, so I put that in there in

(Testimony of J. G. Ennes.)

case something should be shifted; they called it one thing and then the other, and there would be no chance of us getting caught in a change of name that might be applied to it.

I knew that Organized Labor would observe this contract and I knew that when any eventuality or anything did happen, I never knew when somebody was going to change their mind, all I had to was say, "All right, that's there, that is what it is, that is what we were living up to." I knew they would live up to it, that was the reason for putting it in there, and there was no objection, and that clause there, nobody raised any issue, they didn't go into it at all. I wrote it. I said, "here, this ought to go in there." It went in. I didn't copy it from anywhere. I think I cooked that thing up.

"Q. You knew, of course, when you wrote it and did not put in these jambs, moldings and sash in the exempt list, that there would be a restriction on them, did you not?"

"A. I was in no way, shape or form interested in that at all."

I didn't know there would be a restriction on them. There was an argument on what items would go in there on the exempt list, quite an argument. They wouldn't stand for jambs and moldings and sash going on there because they didn't want those items to move within the area, they manufactured themselves.

I had no other contracts at all with these two

(Testimony of J. G. Ennes.)

Unions in 1936 or 1938. I sat on the Employer-Employee Wood Products Conference Committee. I was a member right on through. I was present when they passed on the definition or meaning of the terms "Flooring" and "T & G". I wrote a letter, a little list about it, saying it included certain definitions, that was an explanation or interpretation of the T & G of the exempt [536] list. T & G V is manufactured here. T & G C V and fir is manufactured here. That is sending the lumber down here to be manufactured, not the log.

I sent out the letter (Exhibit 146) after the committee had acted. I was representing the cabinet manufacturers as my interest might appear there and I acted as the clerk to keep the stuff straight. There was a controversy as to what was within the exempt list and what was without. The committee passed on it. I was a member of the committee acting for the cabinet people. The cabinet people used a small quantity of the material that was defined as being within the exempt list.

My interest was any interest I might have there; if they were going to change anything I wanted to know about it. I was acting as Secretary of my own group; for the Conference Committee I was acting as secretary. I never kept any minutes of any of the meetings. I was in the office by myself. I used public stenographers. I have a distant connection for a telephone. I don't go through any laborious business. Sometimes I would make a car-

(Testimony of J. G. Ennes.)

bon of whatever the stenographer wrote for me and sometimes I wouldn't. I used a stenographer and I don't know whether public stenographers always make a carbon. I don't need a carbon if in my opinion the thing is Okeh. I told all my public stenographers to destroy the notes and return them to me. I don't remember that I ever told them that I destroyed my papers, I don't think I did. I explained that to you, destroying of notes by public stenographers is nothing unusual. I was going to continue by saying, in the cases of public stenographers, there would be nothing unusual for it, because the notes really belong—

In the letter Exhibit "J" I was referring to Anderson and Hart, the Employers' representatives in connection with the arbitration award and Messrs. Ryan and Kelly, they [537] were the Labor representatives, one was technical adviser, and the other as an arbitrator. They came to me before that was written. They came into my office and told me what they wanted. That was given to me to draft, and I brought it back in there and exception was taken to that by Mr. Ryan. Mr. Ryan said, "That has to be in permissive form," and he addressed me, I had been the one that had taken it in, "and if you think for one moment, or any one of you think for one moment that for a handful of lumber out of Oakland that we will stop some of the big uptown jobs, you are crazy, get that in permissive form," and I wrote one in permissive

(Testimony of J. G. Ennes.)

form and then that went to Judge Johnson. I did not take it to Ryan, they were there. They told me what they wanted written, I wrote it in draft. Ryan objected.

After we had it in the smooth form they said, "we will call for it." Before it was rewritten he objected. Mr. Hart got it in his mind that it should stay as it was, and he took exception with Ryan, and Ryan pointed out that is the way it was, and that is the way it was going to be now. I took the position, "Well, after all is said and done this thing is going up before Judge Johnson, and we were a bunch of sea lawyers, and they could clarify the situation." The next time I saw that thing it came back in the award from Judge Johnson and again it had been slightly changed.

It was submitted to Judge Johnson to be incorporated in the arbitration award. What Judge Johnson did I don't know, because I was not there, but what I do know is when the award came back that the wording had been slightly changed. I testified that the wages and hours were the things he was instructed to do when the instructions were written. Everything else was negotiated. That was something that was added. That was not a negotiated matter, as far as I know it was added in the Arbitration Award. [538]

Mr. Anderson and Mr. Hart represented the Employers, these other gentlemen represented the Union on the Arbitration Board. I represented the

(Testimony of J. G. Ennès.)

cabinet manufacturers, they represented the mill owners and they represented the cabinet manufacturers. Under our arbitration one man represented the mill owners and they had another man, called a technical adviser, he represented the mill owners. On the other side he had a union man who had a man backing him as technical adviser, and those four, one side represented the mill owners and the other side represented the laboring men, and Judge Johnson sat in the middle.

I wrote that letter for this reason: At the time that arbitration was going on there were four counties in the Bay Area at that time under the jurisdiction of the Bay Counties District Council; and one of the parties who had gone through the negotiations had not ascribed to the award. There was an award about to come down.

The award is dated July 15, and the letter was dated July 12, so there was not any award then. We wrote that letter for the purpose of bringing the four counties into an agreement as to the rate of wages. It does not say anything about that, but I can interpret that for you.

I testified to the same thing this morning I am testifying to now. The object of this was everyone in the area would have the same rate of wage. As far as I know the wage had not been settled then. We were anticipating it was going to be set, that it was going to be different ~~on~~ one part and different in another. Nobody told me it was going

(Testimony of J. G. Ennes.)

to be different. I was not either a mindreader or a soothsayer.

I knew this, that the tendency of the wage was to raise, and I also had a right to come to this conclusion, so here we had in mind the wage scale and the cost of living was [539] going up, and I also knew we had tried to figure with labor and they gave us a rate that was higher than the minimum rate, and it was objected to and I had every right to believe that somewhere along the line the arbitration would strike a medium somewhere in there. From time to time I guess, and still guess right now on arbitration, I did not know what it was going to be, I am guessing, I have told my people from time to time, I am still sitting in arbitration, they had better get the rate up for work in the future, because I was fearful that the arbitrator was going to hand down a higher rate, because I am cognizant of certain things, and I know the cost of living has risen.

I was making an intelligent guess. It was incorporated in the award and in the contract effective June 15, 1938. It was left out of the October 18 one, that changed the rate down to \$8.00. At the time the wage was the same in both places up to that time.

I would not even make a guess at how long the A.G.C. meeting lasted. The notes I heard my counsel read this morning represent what I remember was said at that meeting. As far as I can recall

(Testimony of J. G. Ennes.)

Exhibit 163-1 is the substance of it, the substance of everything I said.

I remember talking to Mr. Webber about our setup in San Francisco, I don't know what date. I do not recall talking to any other outside cabinet men. I did not talk to any cabinet men outside of the State about the setup here. I never made a statement to any of the cabinet men that do not operate here that it would not be good for their health to come in here.

I do not have the letter from some hardwood business interested in our membership, and do not remember who it was from.

We were negotiating in 1938 something like two or three months. I represented Lee Roselyn in those negotiations. [540] I reported to him like I testified that I did the others in 1936. I do not remember any specific report to Mr. Roselyn in 1938. I represented Mangrum, Holbrook & Elkus in the 1938 negotiations. I made reports to them on the wage rate, from time to time what the increase in rates was going to be. I talked to them over the phone. I do not recall sending them anything. I do not recall any mimeographing of contracts or papers that arose out of the negotiations. I did not mimeograph any reports to them on this subject. I did not circulate any mimeographed reports to them.

I recognize Exhibit 93-32 for identification. I am the author of it, I sent it out. That is a mime-

(Testimony of J. G. Ennes.)

ograph, I did not remember that until you handed it to me. I probably sent it, if I sent it to one I probably sent it to all.

Mr. Wine told me he had qualifications of a particular character and he told me the F. B. I. had legal training, and they were auditors, trained as accountants. I don't recall any statement more about that.

I presume I had meetings from time to time during these negotiations with our membership. I don't know whether I did or did not. What I used to do when anything was important, as I thought, I would call them up. As I was engaged in this I probably was not engaged in anything else, because it went on continuously. I cannot recall of any meeting that I had during that period. I had blanket authority to settle these matters without a meeting. I do not recall having any meeting while the negotiations were going on. That would be in 1936, for about three months, and about three months in 1938. I did not keep any minutes of the 1936 meeting.

I will explain to you how we conducted our meetings. Whenever there was anything I considered of importance I would call them up and ask them to report. Then the President would [541] call them to order and I would then make my report. Those meetings were not conducted in a formal way. We did not keep any roll call; they used to away back in the old days, but not in my time. I don't remember of ever making a roll call.

(Testimony of J. G. Ennes.)

The dues were based on the ability, you might say, to pay. They went along at so many dollars per week and it was changed from time to time; I took their totals periodically and applied a percentage to it; then if I did not have enough money one way or the other I would adjust that from time to time, and that ran around something like \$5,000 a year.

There was not a roll call record of attendance during my incumbency by anybody so far as I know. We continued meetings during the corporation, along the same lines as under the old setup. The only time there was a roll call was when I got the books there the first meeting and asked those who wanted to sign, and some signed who were there and some who were there did not sign. I have no copy of the minutes since the first one.

Redirect Examination

By Mr. Faulkner:

Board of Directors of Commercial Store Front Institute has never met as such since its incorporation. I have not destroyed any books, papers, records or files since the first meeting with Mr. Wine in April, 1940.

The contracts in evidence that I have identified were produced by me. I gave these contracts either in original or copy form to the Grand Jury and they were given back to me and I gave them back to Mr. Wine.

I did not prepare the entire exempt list. I was

(Testimony of J. G. Ennes.)

merely the man who wrote it out, except that I added certain portions, the other portions were there at the direction of [542] some other person. The first sentence, I would say, had many fathers. It is, however, in general substance, from the 1917 agreement. I wrote the last paragraph that follows the exempt list, in its entirety. The only matter discussed before that paragraph 16 was written was something about the use of material in this area, is what I testified to. The application was to this area, and they had a broad application and they did not want to work on stuff that was interfering with organized labor. The original proposition was, as I got it, that organized labor was not going to work on non-union goods. [543]

I sent papers marked 93-32 to members of the Cabinet Manufacturers Institute. I wouldn't call it a report.

Thereupon, Exhibit 93-32 was introduced in evidence as defendants' Exhibit L, and read to the jury as follows:

“Memorandum as to Payment of Wages Established by Arbitration Effective Next Pay Day.

“The rate of wages established by Employer-Employee Agreement effective June 15, 1938, shall be paid in the following manner:

“1. All Employees subject to the Agreement shall be paid the new rate of wage retroactive to July 10, 1938.

“2. The payroll shall be made up so that the

(Testimony of J. G. Ennes.)

difference between the old rate and the new rate is on a separate check. The check covering the difference shall be endorsed at the time of payment by the Employee to the Employer and a receipt issued covering such check or checks showing name of employee and amount in detail, said receipt to be delivered to a representative of the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. A memorandum receipt will be given to the employee if demanded. The check shall be applied to offsets arising from work subject to the old rate of wage as set forth in Paragraph 32 of the Agreement. The total amount so applied shall not exceed such offsets as agreed to by the Employer and the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. The amounts of the offsets agreed to shall be in writing and signed by the Employer affected and the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. The endorsed checks shall be held intact for the Union's accounting.

"3. In the case of offsets not existing or having been paid off, then the checks shall be endorsed to the Conference [544] Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters in such manner as they shall designate. The Employer shall deliver said checks to a Representative of the Conference Committee

(Testimony of J. G. Ennes.)

Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters upon demand and receipt for same.

“4. All funds withheld by the Employer as offsets against agreed to jobs subject to old rate, unless completed by March 1, 1939, shall be released to the Union. Upon the completion of said jobs the Employer shall be refunded by the Union in the amount agreed to.

“5. Unadjusted matters shall be referred to the Joint Committee referred to in Paragraph 27 of the Agreement.

“6. In the event there exists work on which a refund is claimed and not agreed to by the Union, same shall be noted on the list agreed to as ‘The following jobs are subject to review as per Paragraph 27 of the Employer-Employee Agreement.’”

I sent those instructions to those who belonged to the Cabinet Manufacturers Association. My labor negotiations on behalf of members of Cabinet Manufacturers Institute were not confined solely to Millmen's Unions 42 and 550. I handled all their labor negotiations with three separate unions—milling, cabinet, finishers and carpenters. Rates of wages changed from time to time as to all of them. We had separate written contracts with milling and cabinet finishers. One written agreement with carpenters, the other one is not. It is agreed to substantially the same as the general contractors, but

L

(Testimony of J. G. Ennes.)

one-paragraph was not agreed to. Agreement with the carpenters has not been read in evidence that I recall.

Recross-Examination

By Mr. Clark:

The physical work of writing the 1936 contract, besides the exempt clause, I did and re-did a number of times. I would [545] draft it from time to time and submit it back, and would go over to the meetings and whatever sections were changed I would redraft and submit again, until all of us arrived at the final draft which was signed. That was done in 1938, also. Exhibit 132 is the 1938. Section 17 reads as follows:

“In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase, working and sales of the following products is excepted.”

The physical writing of all that during the period of negotiations I wrote. It was at the dictation of those present. That is the language of all, a composite. I was acting as sort of secretary in 1938 and 1936, like I was doing for Wood Products Conference of San Francisco. I was acting as secretary for Lumber Conference of San Francisco. I

(Testimony of J. G. Ennes.)

have defined it as acting as a clerk. I also was representing my own interests.

Paragraph 17 of Exhibit 133; which is the October 18 amendment, reads as follows:

"A. 'In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers or members of the United Brotherhood of Carpenters and Joiners America signators hereto.'"

That superseded Section 17 in Exhibit 132, which was the original 1938 contract, to this extent—there is another copy that came in ahead of this which was headed up "Rough Draft." The original paper, the paper that was signed, has a heading up there, "Rough Draft." The body of it is the same. The wording [546] is exactly identical. That also was put in my re-draft by me and put into smooth draft and brought back and then those concerned carried that away and were supposed to vote on it. Exhibit 175 is the rough draft. The difference between that and Exhibit 133 is the language, "Rough Draft, Subject to Correction," at the top. Exhibit 175 is the agreement which was supposed to have been smoothed out and voted on. It was nearly 8 o'clock at night when this thing was done. The men, themselves, were waiting to vote, as I understood it, and we couldn't get the wording straightened out. I

(Testimony of J. G. Ennes.)

used a public stenographer and I had to go to the Palace Hotel, that is the reason we put that on there. We didn't know what the wording was. Exhibit 133 was an inquiry to find out where we were at—in other words, what had happened. Section 17 in both of them are identical. Section 17 in the October 18, 1938, says that no work would be done on any material or article that has been made under conditions unfair to the members of the Brotherhood on articles made by employers of members of a Brotherhood. The whole section 17 in Exhibit 175 had many authors. I drew it up in final form. List of exempt items was taken primarily from a contract of 1917. Last paragraph of section 17 comes from the other contract and I was the author of that at that time. The last paragraph I referred to had the same authorship as section 17 Exhibit 175. Exhibit 132 is the contract and Exhibit 175 is the change which broke the rate back to \$8.50; 132 has to deal with four counties, and 175 has to deal with six counties. I don't recall that anything particular came up about the exempt list in the 1938 setup. Exhibit 132, the contract in the summer of 1938, has stock plywood panels, one of the exempt items. I think that was in the 1936 exempt list. They are manufactured in the Northwest and in California. Stock plywood is made out of logs, depending upon the mill, in the manufacture of plywood panels you would make it out of hardwood. If you manu- [547] factured it out of Douglas Fir

(Testimony of J. G. Ennes.)

you would manufacture it out of Douglas Fir Logs. In 1938, they were manufactured in the northern part of the State, I think the white pine. I don't remember the company. The Pacific Manufacturing Company used to build up a panel, they took the panels and built them up. In 1938, they manufactured what is known as stock plywood panels. Our group bought plywood from any sources or every source. There was Oregon pine panel coming from outside of the State, and Douglas Fir. The only place Oregon pine panel is manufactured in quantity, in stock, is in the Northwest. It is not a question of grain—it is just a question of manufacture. Our concern did buy that plywood from the Northwest. It was on the exempt list in 1936 all through. I do not recall that we placed any additional items in 1938 that were not on the exempt list in 1936. We did not place any additional items. The exempt list was important to our group to this extent, that that whole paragraph, the whole arrangement was important, that I wanted to be sure under any eventuality that the cabinet manufacturers were going to be in a position they have always been with regard to arrangements. When the thing first came up in form, I was disturbed about it and thought in some way it might curtail us, and I called Mr. Mullen and told him that it looked like there might be some difficulty on account of the movement to get the companies unionized. There were two conversa-

(Testimony of J. G. Ennes.)

tions. He just told me to watch my step, to be sure to see that nothing happened to interfere with the free flow of material to the cabinet shops. That is the substance. I raised the point that there might be a strike. His position was, strike or no strike, stand pat. Then there came up the question of this list, and I added items to this list. This is the second conversation with Mr. Mullen. I called him up and told him I thought I had in my list every possible conceivable thing he could ship regardless of who brought it in or where it came from, locally or otherwise. I did not know what [548] turn it might take, and I called him on the telephone again and asked if there was anything he could think of that would interfere with it and he said, "No, it sounds all right, but you have been at this game long enough, you be sure that nothing interferes with, any stoppage." I told him, "I will be sure of that, because I have got a paragraph here and that affects our case." I didn't care what happens, I know this, that contract will stand up, because somebody may get cockeyed on this thing, but they will stand up to it. He said, "All right, you have been at this game long enough, and you be sure nothing happens." I was sure, and I believe he was assured that I had everything covered so that nothing possibly could happen with regard to somebody wanted. From that time on, I did not do anything more about it. I felt safe and assume he did or he would have said he was

(Testimony of J. G. Ennes.)

not. I could not tell approximately the date of this conversation. It was in 1936. I did not tell any other members. Mr. Mullen at that time was president. He told me to go ahead and be sure I had the particular thing covered so we would be protected. I represented, in 1936, all of the defendants with the exception of Leo Roselyn and Mangrum, Holbrook & Elkus. In 1938, in addition, I represented Leo Roselyn and Mangrum, Holbrook & Elkus. They were members, and I proceeded on the theory I did represent them. Whether I did legally, I don't know—I assume I did. The president authorized me in 1936 to go ahead, and in 1938 I went as I did in the previous years.

“Mr. Faulkner: So there won't be any dispute in this respect, I think I have made it clear that as to the employer defendants Mr. Ennes did represent them in these matters.”

I signed the letter Exhibit 11-1 to the Millmen's Union 42. I did not write the letter. I signed it and it was mailed. I don't know the exact date when the Millmen's Union appointed an additional business agent. It was after that, as [549] a guess, I would say, about two months. I don't know the entire duties of this additional business agent. I know he was checking up on the rates of wage, trying to find out at my request what was happening in the way of chiseling that had been going on. I do know he straightened up matters on the adjustment, the audit, and things of that kind. I know

(Testimony of J. G. Ennes.)

that he visited various jobs looking for labor conditions. I don't know that he checked up on Northern material that came in this area. I knew the union selected an additional business agent. I don't know that they did for the purpose of recapturing the work that had been going out of this territory and to non-union plants. I did not know that was in the minutes. I knew that they did select a committee. I did not know who they were. I didn't know that according to the Union minutes this additional business agent was to make it his particular work of contacting owners and home builders, architects, contractors, merchants and related trades, to have their work done in the local plants and to hire men of the union. I know that he dropped into the Association from time to time. Mr. Helbing. I know he was to keep in touch with individual employers and obtain their cooperation for the same purpose, or that he was to keep a constant check on retail lumber yards and second-hand yards, to see if the millwork and cabinets they sold were local union-made products. I did not know that is what the union selected him for. I knew some of the things they selected him for.

I think the conversation with Mr. Webber was in Del Monte. Mr. Mullen was there. I do not recall who else was there. I told Mr. Webber they were an open shop; that I thought it was better for them to go closed shop, because they were between horns of a dilemma; that in any eventuality the

(Testimony of J. G. Ennes.)

Government would see to it they should go closed shop; that we worked with a closed shop and although it was bad enough it was not as bad to [550] sit down and fight all the time. It was probably before 1936. I did not tell him whether he went union or not that it would be unhealthy for him to try to do any business in San Francisco. All of the members of our group in 1938 were union. There were non-union plants operating after Exhibit 175 was signed in October, 1938. I do not know the name, but there were plants that were not union and were not organized. They were small.

PERCY ROBERT KAHN,

called as a witness in behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Adams:

I am connected with Forsyth Hardwood Company in San Francisco, and have been for about 20 years. We handle a general line of hardwood—probably 42 varieties, all imported out of the State of California, chiefly from the South and from the Philippines, Japan and Africa. Some of the types are ash, oak, hickory, mahogany, walnut, birch, beech and maple. About 75 per cent. of it comes in rough and 25 per cent. comes in surfaced, or smoothed by milling operation. In 1936 to June, 1940, our firm did business with Mullen Manufac-

(Testimony of Percy Robert Kahn.)

turing Company, Mangrum, Holbrook & Elkus, Pul-Vue Fixture Co., that is Mr. Schmidt, Fink & Schindler, Exposition Woodwork Company, L. & E. Emanuel, William Bateman, Unit-Built Fixture Company, H. Schulte & Son, Ostlund & Johnson and Braas & Kuhn. We sold them many of the varieties we carried. The material did not bear a union label.

LEO ROSELYN,

called as a witness on behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Faulkner:

I am the owner of Unit-Bilt Fixture Company, designers and manufacturers of commercial store fixtures, and we manufacture and install store fronts and work kindred thereto. Our main [551] business is the manufacture of cabinet work necessary for the complete installation of a store, regardless of the type of store. We use practically every material necessary for the installation of a store, from the floor coverings to the fixtures, to the decorations, to the materials used in the store front, which are varied and numerous. That is what we sell to our customers. I have been in business as Unit-Bilt Fixture Company since approxi-

(Testimony of Leo Roselyn)

mately the first part of 1937 to date. I was not in the business described in the year 1936.

It is understood for the purpose of the examination that, Cabinet Manufacturers Institute and Commercial Fixture Institute relate to the names that are set out in full on the indictment. I became a member of Cabinet Manufacturers Institute and later Commercial Fixture Institute. Subsequent to 1937, when I joined Cabinet Manufacturers Institute, I knew Mr. J. G. Ennes. He was secretary of Cabinet Manufacturers Institute. In 1938, I was familiar with the fact that negotiations with labor were going on. I don't recall the date, but it was in about the middle of the year. When I commenced business in 1937, I was not familiar with any of the negotiations that had been carried on 6 or 8 months before with labor to fix the wage rate. I didn't ever receive any copy of any contract entered into with organized labor in connection with the wage rate. I was informed of the wage rate. We employed cabinet makers and we employed finishers and carpenters. The same rate applies in most instances to cabinet makers and finishers, but there was a higher rate that applied to carpenters. We have a separate crew that we designate as carpenters. The carpenters are used on the outside work, including installation of fixtures originally made in the shops and they take care of our alterations. Personally, I did not have occasion in 1938 at any time to negotiate any con-

(Testimony of Leo Roselyn)

tract of any kind with organized labor. I knew of my own knowledge about the rate of wages [552] we were paying the union men who belonged to Millmen Unions 550 and 42, and that it was changed in the year 1938. I believe the rate was changed from \$7.40 to \$8.40—I am not sure of my figures—probably \$8.40 to \$9.00. That is my best recollection. I did not ever see the contract fixing the wage rates. Millmen Unions 550 and 42 were one of three unions we employed, our records will show. We observed any change in the wage rates in 1938, affecting Millmen Unions 550 and 42. I don't have charge of the records that are kept for the men, because I devote most of my time to selling and estimating and designing. I am not familiar with some of those conditions. From 1937 until the return of the indictment I had never seen any written contracts with organized labor. That is true of all the employees we had. I knew of their existence, but I had not seen them. Apart from any written contract, I never had any discussions with any union man on the subject of from whom we should buy the materials used in the operation of our business. A union man never told me where to buy, nor suggested we buy it from the local mills. I buy the product of lumber mills. That is my business. In the course of that business, I use lumber materials. I buy all of my materials from local lumber dealers. I do most of my business with Forsyth Lumber, from whom I buy all my hardwood; West

(Testimony of Leo Roselyn)

Coast Lumber Company, from whom I buy practically all my soft wood, and United States Plywood Company, I buy all of my plywood. Those three companies supply substantially everything I use in the nature of lumber. If I were in need of millwork and patterned lumber, they would supply it to me—in fact, they have on occasions. I know the hardwood that I buy comes from the Eastern States, Southern States, and other parts of the world. I know that the soft wood that I buy practically all comes from the Northwest. Occasionally, we buy a little redwood which comes from California, but we use very little of that. The plywood, some of it comes from the [553] Northwest; wherever there are soft woods, and some of them come from the Eastern and Southern States, when they are hard plywood. Sometimes millwork on the millwork or patterned lumber material which ultimately got into the Unit-Bilt Fixture Company was done in San Francisco. I did not ever select the mill. I order the lumber as I require and if his stock does not have the particular type of material I need, he may and did send it out to some local mills to be milled to the specifications which I asked for. I bought my materials in less than carload lots. Material I bought that might have been sent to some local mill to be processed is only usually in small quantities. I mean by small quantities, if we ordered, say two or three thousand feet of lumber and require a special size or thickness,

(Testimony of Leo Roselyn)

and want it surfaced, the local dealer would send it out and have that particular part of the work done and send us the complete load, which would include what was worked on what was directly out of his rack.

During the period subsequent to 1937, when I entered business, the lumber material that came into my shop did not bear a union label. No one has ever refused to work on any material we brought into the plant. We never have had any discussions on the subject-matter with them. When the material has been fabricated into whatever design requested for the purpose of filling the contract and went out to be installed, it was installed by union carpenters. The union carpenters employed have never refused to install products of Unit-Bilt Fixture Company. They have never had any discussions on this subject of not installing them.

I am a licensee of Grand Rapids Store Equipment Company. Both of the employees of that company testifying in Court were members of the organization through which I am licensed. I believe our negotiations for the licensing were completed about the end of May, 1930. I was licensee of the Grand Rapids people from the time I was licensed to the indictment. We are licensees in Northern California [554] and part of Nevada, and either sell or manufacture the products which they sell under catalog. They have a catalog of standard

(Testimony of Leo Roselyn)

fixtures and in conjunction with that catalog we have a right, under the license, to sell that product or make it at option, and by selling it, I mean selling the product made in the Grand Rapids factory, or, at my option, making those same products under a royalty basis. The object of this license was that I would add to these standard fixtures sold special equipment and fixtures that I could make more adequately in my own plant, and together with that take care of all of the special work and installation necessary to make a complete store job.

I get business from J. C. Penney Company and I am their representative in the San Francisco area, carrying a stock of fixtures for them. I have done that continuously since I commenced business, and still do. I know Mr. Christenson, who testified, very well. In connection with my representation of the Grand Rapids Company, I didn't know anything at all about Grand Rapids' connection with the work in Roos Bros. No representative of that company ever discussed that with me. I recall Mr. Christenson's testimony about J. C. Penney Company. He was District Manager of J. C. Penney Company. In August, September and October, 1938, I did work for J. C. Penney Company, with respect to a store in South San Francisco.

Exhibit 178 consists of copies of stock orders submitted by our company to J. C. Penney Company for work in their South San Francisco store. They are invoices to the J. C. Penney Company, prepared

(Testimony of Leo Roselyn)

after the work was finished and installed. We did all of the work represented by the invoice. Defendants' Exhibit H for identification is a list of materials sent to me by the J. C. Penney Company, giving me the amount of fixtures that were to be taken from the Vacaville store and installed by us in their South San Francisco store. The direction is dated August [555] 25, 1938. I probably received it within a day or two after it was dated.

Thereupon, the document was received in evidence and marked Defendants' Exhibit H.

"Mr. Faulkner: Under the heading "To" there is a number here, '82537,' and the date appearing here is August 25, 1938. 'Address J. C. Penney Company, Inc. Store 1059, Vacaville, California,' which is typed over some mimeographed lettering here. Then there is, 'Located at, State Store No. How ship, South San Francisco, When California, 1539. Terms. Requisition and Store Number must appear on all invoices, bill of lading with weight must accompany all invoices. Delivery September 12th. All packages and cases must be numbered corresponding usual numbers must appear on all invoices and bills of lading.' Then there is a description of the items, shelving, and so on. 'Do not issue usual transfer charge. Accounting department will adjust at present book values.' There is typed, 'Construction Department.' "

That was received in the regular course of busi-

(Testimony of Leo Roselyn)

ness from J. C. Penney Company, on or about the date it bears. It represents a list of fixtures then located in the Vacaville Store and was submitted to me so that I could make their plans and add to it and take those fixtures and install them when they arrived in the South San Francisco store. My instructions were to pick these Vacaville fixtures up and install them in the South San Francisco store. I removed the Vacaville fixtures and installed them in the San Francisco store. I have our invoice of October 20 which covers that part of our work which included the labor necessary to haul the fixtures from Vacaville and install them in the South San Francisco store, which invoice is already in evidence.

In addition to the order dated August 25, 1938, [556] document marked Defendants' Exhibit M is an order dated August 25, 1938, received from J. C. Penney Company, and we furnished and installed these items.

Thereupon, document marked Defendants' Exhibit M was introduced in evidence.

I heard testimony about Grand Rapids and the Roos Bros. job. I never heard anything about any connection Grand Rapids had with Roos Bros. During the time I have conducted the Unit-Bilt Fixture Company I have never engaged in the business of selling anything manufactured or handled as a commercial fixture man to lumber yards and jobbers in the San Francisco Bay Area. None of

(Testimony of Leo Roselyn)

the articles handled in our shop are fabricated for the purpose of being used in construction of homes and dwellings. We do no work of that kind at all. After lumber comes into our Commercial Fixture business we never sell it to anybody in the form received. We only use it to fabricate the fixtures that we manufacture.

Cross-Examination

By Mr. Sirpoli:

I have been in business as Unit-Bilt Fixture Company since 1937. Prior to that I was sales executive for the L. & E. Emanuel Company, from 1935 to the end of 1936. I have had a connection with the Webber Company during the period I was in business, from 1937 to today. My duties are primarily looking after sales promotion and designing. I supervise the books. I do not handle the payment of wages, but I sign the checks. I have a bookkeeper who handles the bookkeeping and wages. At one time, my wife did it for me—later, we had a man by the name of Wordenshine, who is now doing it. I believe Mr. Wordenshine was doing it in 1938. The correct scale was \$7.40, \$8, \$9 and then changed back to \$8.50. I heard the testimony of Mr. Strong. I heard him testify he was an auditor. I believe he said he was [557] auditing the books of all the cabinet shops. I do not recall that he ever came to my place of business. I know there was an arbitration award in connection with a

(Testimony of Leo Roselyn)

wage scale and that provision was made with relation to the payment of wages on jobs already contracted for by the manufacturers. I know there was an audit of our books made in connection with the adjustment of that wage. I know somebody appeared at our place of business in connection with that adjustment. I don't know who he was. I didn't see him or talk to him. I think my bookkeeper, Mr. Wordenshine, must have handled that. I would say the result of the conversation was that he audited the books. I knew about it in a general way but I did not go into the details. I relegated those duties to the bookkeeper. I only recall one audit. I believe that is the only one. It is correct that I knew of the existence of the contract with the Labor Unions 550 and 42, but I hadn't seen them. I was informed of the existence of that contract by Mr. Ennes. I don't recall when that was. I was informed of the existence of that contract no doubt after it was negotiated, or after it was made. I have no reference to anything in particular. In 1937, when I became a member of Cabinet Manufacturers Institute, I did not know of the existence of a contract with the local unions. I knew there was a rate of wages that were in existence and I conformed to those wages. I knew, after I joined the association, Mr. Ennes was representing the members of the Cabinet Manufacturers Institute, in connection with labor matters. Before I became a member and paid dues, I knew there was a union

(Testimony of Leo Roselyn)

wage scale. I did not know of any particular contract, however. Before I actually paid dues and became a member, I knew Mr. Ennes was acting on behalf of the members of the association in labor matters. One of the purposes of joining was to get the benefit of his services and that he would represent me in those matters. I knew there was a change from the Cabinet Manufacturers Institute to the Commercial Fixture [558] and Store Front Institute. I received a phone call from Mr. Ennes with regard to it. I received no letter. I went to his office. There was a general meeting called of the Commercial Fixture group. There was a discussion at that meeting. As I recall it now, there was a general meeting that included quite a number of individuals. I attended only one such general meeting. I recall some of the men present—quite a number of them I didn't know. I recall that Mr. Ennes was there and Mr. Mullen, Fink & Schindler, Mr. Stauffacher. I believe Mr. Kuhn was there, and Messrs. Schmidt and Schulte were there. Mr. Brandelein was there. I am not sure if anyone was there from L. & E. Emanuel Company and if Mr. McRae was there. The people I recall were part of the general group. There were others, but I did not know them. I think Mr. Ennes presided at that meeting. Mr. Ennes explained there were negotiations that would have to be made with the unions for new wage increases, and he was calling a meeting for the general purpose of discussing

(Testimony of Leo Roselyn)

that subject and had in mind to form a committee that might deal with the unions, so everyone there would not be confined that same activity. The only meeting I know of was with respect to wages in 1938. As I recall, it must have been in the middle of 1938—I don't know just exactly the date. It wasn't a special meeting of the Cabinet Manufacturers Institute only, it was a general meeting for, I believe, cabinet shops and some of the mills, to which I had been invited. The meeting, I believe, was called for the purpose of forming a committee to talk with the unions and negotiate with them regarding this wage condition which they were talking about. I don't recall if there also was discussion as to the forming of a new contract or signing of an agreement with the unions. I would assume that those negotiations would pertain to the contract which was negotiated with the unions after they had agreed to those conditions. I believe a committee was named. I do not recall who the members were. They didn't [559] discuss at that time an exempt list. I have become familiar with the exempt list only since I have appeared in court. Prior to my actual appearance in court, in connection with this trial, I knew nothing about such exempt list. I never discussed that prior to my appearance in this court room with anybody—not even my counsel. I only met my counsel once before I appeared in court. I couldn't say a discussion about an exempt list didn't take place. I don't

(Testimony of Leo Roselyn)

know about it. That was the only meeting I attended. I was at the office of Commercial Fixture and Store Front Institute on various occasions, probably the entire period in which I was a member. Perhaps 10 to 12 times when meetings were called there. There were occasions when meetings were called for the purpose of taking up matters that were of general interest to the group as a whole, and I attended those meetings. Mr. Ennes usually presided. There was no formality. It was just a matter of meeting and discussing problems that the meeting was called for. None of the meetings pertained to wage scales nor any exempt list. I know Commercial Fixture and Store Front Institute was incorporated in January, 1939. That was one of the meetings. I don't recall the date. Mr. Ennes must have called me, because I have no notice. He usually called me on all meetings. We very seldom got any other form of notice.

I may have received such a letter as Exhibit 60-3 (letter addressed to Mangrum Holbrook Company), but I don't recall it. I did attend a meeting that pertained to the incorporation of Commercial Fixture and Store Front Institute. When I got to the place of business of the Institute, there were other members of the Institute present, or of the old Cabinet Manufacturers Institute. That was a meeting,—I think the only subject was that Mr. Ennes said he had changed the name of the Cabinet Manufacturers Institute to more nearly interpret our

(Testimony of Leo Roselyn)

actual business, the Commercial store fixture business—that was because [560] we were general contractors and had a great deal of work on the store fronts, that he felt that would be a particularly emphatic part of the name, that would be helpful to us. There was quite a discussion about that name and why he had adopted that name as a substitute for the other. Mr. Ennes told us we were incorporated and he generally explained about the corporation; that the corporation was set up as a non-profit corporation or organization. It had certain functions and I think he explained there was a clause that established a president and secretary to carry on and act for the corporation, and I believe that at that time the president was elected. Those clauses were not read. Mr. Ennes just explained them to us, generally. I don't think he explained the duties of the respective officers—he may have—I don't recall. I think Mr. Mullen was elected president. I participated in that election. All those present participated in the election. I think Mr. Ennes was elected secretary and Mr. Ostlund treasurer. I participated in the election of all those officers. I know all the men who signed that were present and there were others there that did not sign at that time, and indicated they might sign later. We all signed in the presence of each other. That is my signature on the last page of the book entitled, "Minutes and By-Laws." (Exhibit No. 67.) I didn't read the page. Mr. Ennes asked us

(Testimony of Leo Roselyn)

to sign and I put my signature on without reading the page at all. Mr. Ennes had explained it generally, the general procedure and what those by-laws were and the organization was to represent. I accepted his explanation and was satisfied to be bound by it.

Defendants' Exhibit H is a list of items taken from the Vacaville store to South San Francisco. My employees installed those fixtures in the South San Francisco store. They removed those fixtures from Vacaville. They were not removed by J. C. Penney Company. We removed them. I think you will find an invoice that covers that, which is the last page of Exhibit 178. [561] No doubt Exhibit H came in the mail. I could not say definitely how I received it. I know it was in my possession. This is my exhibit, I brought it. If you ask whether I received the document I don't know, but it would be true of all our mail that comes from the Penney Company. I see them when they get there, I don't know whether they come in the mail, but that is the usual procedure. In this instance I don't know exactly how I received it. I know it was received immediately after the date thereon. I would say it came into my business files in the ordinary course of business; otherwise I would not know. I don't know definitely how it came. I know it did not come before August 25, it naturally came after that. I know there is a time between August 25 and September 6, in which shop orders were written

(Testimony of Leo Roselyn)

named were the officers I designated, regardless of when elected.

It is correct I said we did not purchase any mill-work. I manufacture stock moldings. My fixtures have been so small that they are negligible. I purchase very few moldings. I make practically all my own moldings, because I do special work. I have purchased in several instances some moldings. I have never purchased sash. I occasionally purchase doors. No *tung* and groove that I can recall. I have purchased flooring. I purchase no rustic of any kind. In the construction of store fronts or of fixtures, I usually purchase raw materials and make up or fill in the parts of work that are used.

Redirect Examination

By Mr. Faulkner:

All of the articles of lumber I purchase are for use by me. They are not purchased for resale in the form received by me.

RICHARD ELKUS

called as a witness for the defendants, was duly sworn and testified as follows:

Direct Examination [565]

By Mr. Baegalupi:

I am president of Mangrum, Holbrook & Elkus. The corporation was organized on July 2, 1937. At

(Testimony of Richard Elkus.)

that time I was vice-president and general manager. Before I entered the company, I was in the paper business. This company originally was the Mangrum & Holbrook Company which we took over some of the assets, and the new corporation we called Mangrum, Holbrook & Elkus. It was not a successor of that company. We bought certain specific assets. We are in the bar and restaurant equipment business. We basically have glassware, silver, kitchen equipment of all kinds. Then we have along with that and in order to complete the circle, we manufacture certain metal equipment and we manufacture certain wood equipment in what we call the wood plant, so we make a complete job.

In our woodworking department, we make such things as bars and back bars, counters and all type of equipment that would fit into the restaurant or metal setup, water stations, tray stations and bus stations,—some joined with equipment that comes out of our metal plant. For instance, a water station is part wood and part metal. The whole purpose and idea was of developing the complete installation. We are class B members, associate members of this association, and at that time asked about it and was told that we got information regarding wages and hours for the employees in the wood plant through this means, and the dues, I think, were a dollar a month, although I haven't looked it up to find out. I think we paid only \$18 in

(Testimony of Leo Roselyn)

up. That order must have come into our file. I don't know exactly when the shop order was written up in connection with that order, but I know some orders were written up on September 6. We had received an order that covered new fixtures which we were to furnish, and naturally those new fixtures could not have been received without having received this order at the same time, because both pertained to exactly the same job. That is my recollection of it.

Exhibit 178 is an invoice covering materials placed in the South San Francisco store of J. C. Penney Company. There are several invoices covering that. The invoice also included a cost in connection with removal of fixtures from the Vacaville store as indicated in Exhibit H. I received orders in connection with the other fixtures mentioned in our invoice. I don't know where that order is right now. If it were a written order it would be in our files. Part of it is in my files right now—part of it you have. There was another order there too.

Exhibit M is an order dated August 25. That is not one invoice, that is about six invoices, so there is an invoice here that probably covers the items. There is another invoice [562] that covers this installation. The last page covers the Vacaville store. I don't know where the order is that covers the remainder of the fixtures incorporated in that invoice. I can look for it. If I had no order in my

(Testimony of Leo Roselyn)

file it is probably due to the fact that I checked the plan with the orders I had and received additional information either from their district manager or their construction man to make up the other items that appear on these other invoices. In some cases we did not get a formal order from the Penney Company to make certain parts of the equipment, but got verbal instructions to go ahead and complete the installation according to the plan.

“Q. Now, in connection with the J. C. Penney Company did you do and perform the work in connection with these fixtures and installation of the other fixtures by reason of the plan, or did you get an order with specifications?

“A. There was probably both.”

If it were a written order, I would have it in the file. I will search our files and ascertain whether I have such an order. I know we wrote up shop orders for these items. We have a shop record of the work performed in connection with the South San Francisco job. I can produce anything that is covered in that invoice that went through our shops, and everything that went through our shop we received an order on. I don't recall if there was an accompanying letter of instructions with Exhibit H. I looked through the Penney file on that subject and did not find any. I did find some shop orders.

The most important thing other than labor problems discussed at meetings of Commercial Fixture

(Testimony of Leo Roselyn)

and Store Front Institute was to get enough money to pay the secretary for his services. I recall two or three definite problems which we were facing in the industry, which I was particularly interested in. One related to legislation in Sacramento that might affect designing of our own work. I remember a meeting in which Mr. Ennes had appeared before the [563] Board of Supervisors and was reporting on some new legislation the Fire Department was trying to put into effect in the shops with respect to spray guns. There was no discussion in those meetings with respect to prices for commodities or services which I and the members of the Institute had to sell.

I have never heard of any agreement to keep millwork or patterned lumber out of the San Francisco Bay Area. I have no prior knowledge of that character whatsoever. I had no conversations at any time with anybody about an agreement pertaining to the keeping of millwork out of the San Francisco Bay Area, in 1938. I am very positive.

Redirect Examination

By Mr. Faulkner:

I understand millwork and patterned lumber to be the product of planing mills and saw mills as such. I did not manufacture, use or buy that product. All that work is done in my own shop. I did not put the date, August 25, 1938, on Exhibit M. The paper I ultimately received purported to be a paper prepared by the J. C. Penney Company,

(Testimony of Leo Roselyn)

dated August 25, 1938, addressed to Unit-Bilt Fixture Co.

I received Defendants' Exhibit H and acted upon it. I did not put the date August 25, 1938 on that paper. That is in the exact form that it was when received. I recall testifying about the election of the president of the Institute. I really don't know whether the President was elected by the members or by the Board of Directors. I know that when we talked about that Mr. Mullen was President. He may have been already president, I am not sure. My recollection was that at the time the president was elected Mr. Mullen was President, and so I inferred that it was done. Now that you mention that I remember that power to elect officers is vested in the directors of a corporation. I only attended one meeting with respect to that. It was at the [564] Commercial Store Front Institute.

It was thereupon stipulated that the minutes show the officers were elected by the Directors.

I do not recall having received, in the middle of 1938, a memorandum as to the effective date of the wages established by the arbitration.

Recross-Examination

By Mr. Zirpoli:

I can't refresh my memory as to just the exact verbiage used. I do know at the meeting that Mr. Mullen had been elected or was being elected president of the Association. I knew the other men

(Testimony of Richard Elkus.)

the last year or eighteen months,—in fact, since the start of the company. We employ cabinet makers. Whether that was the same union as the millmen's union, I am not sure. I have never seen any contract covering hours and wages or labor conditions, or any contract to exclude any material from this district, nor heard of those things at all. I have never heard of any oral contract [566] from anybody regarding any of those matters. I know Mr. Ennes. I saw him for the first time at a meeting of which we were told about. It was the first meeting I ever had heard about this association, on sales tax. I was at that time working on a sales tax problem and was trying to get some rulings, and this meeting was called of the association and when it was over regarding the sales tax, I spoke to Mr. Ennes, whom I saw there for the first time. Afterwards, I went down there and tried to get more information through our own attorneys, because that information did not evidently cover it. I do not recall that I attended any other meetings of the Cabinet Institute. I remember a letter coming in when the Institute was incorporated in 1939—a new organization to be formed, or something and we did nothing about it, because it wasn't of any interest to us at all. I didn't attend the meeting. I didn't see the articles or by-laws of the institute and didn't sign the by-laws. No other officer of our corporation signed any by-laws. No other officer from our organization attended that meeting. Purchases for

(Testimony of Richard Elkus.)

the wood shop are done the same way as all other purchases, through a purchasing agent. A requisition would pass through the purchasing department from the department requiring the goods and the purchasing agent would purchase it. Purchasing policy of the firm is very well defined, and that is, wherever possible, three bids are called for, and based on the price and quality, the low bidder gets it. I am not concerned from where any material comes. I do not know from where the materials come. In fact, it is the reverse of that—I have refused to interfere with the purchases in our business, due to the fact that I thought it would allow other officials of the firm to maybe choose their friends to buy from, so we have a definite policy that purchasing is done in a definite method. I assume millwork and patterned lumber is casing and door jambs and moldings, and things of that kind. We [567] may possibly on a fixture or bar use a little molding. I don't know whether we might buy a few feet of molding or not but I know we would make—I have seen molding in our plant to fit on these bars and counters, but we are not in the business of selling anything of that kind. We install store fronts; not as a regular part of our business. The whole wood end of our business only amounts to 10 per cent. We would do a store front when it has been proved that it will do the rest of the business some good. As a part of the services for hotel and restaurants and bar fixtures and bar

(Testimony of Richard Elkus.)

equipment, we install bar fixtures, stalls, seats and counters. Those are made in our wood plant. Our employees install our fixtures. The men who work on the inside are cabinet makers. The men who work on the installation are carpenters. No one has ever interfered in the installation of any of these things. The only thing I know about an exempted article is the question asked me in my attorneys' office, prior to trial, if I knew of an exempt list, and I have heard testimony in court. I never heard of such list before. We do not use sash. Occasionally, we might use a door in an installation. We might make a door ourselves where, for instance, in a cocktail lounge if somebody would require a door or a cut-out fixture. We have had three or four doors in that line and, I think, we may have bought maybe four or five doors to fit in where we were repairing something.

JOSEPH LOUIS EMANUEL

called as a witness for the defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Faulkner:

I am a defendant and president of defendant L. & E. Emanuel Company. The firm has been in existence 88 years. I have been president a little

(Testimony of Joseph Louis Emanuel.)

over 50, only. I was president from 1936 to 1940. Our average men employed is nearly 70. [568] Among the 70 employees are members of millmen's unions 550 and 42, who were employed during the period from 1936 to 1940. During that period our business was to design and fabricate high-class store premises. Much veneer wood is used. We plan a store from its source and equip it to the point where we turn it over to such customers as Magnin's and Ransohoff's. The type of a store for ladies ready-to-wear. We design and appoint clubs, night clubs, banks and bar fittings. We study out the color scheme complete to the floor coverings and turn the store over in its complete entirety with all the different elements that go to make up a complete store. In carrying out our business, we use lumber products. The world is our field in getting such products. We have Norwegian Alpine, Siberian Oak, Brazilian Rosewood, Cocobolo from the Panamanian section, Prima Vera from Mexico, domestic woods from the South and East, Indiana and so on. Soft woods and a generous percentage comes from the North, such as Washington and Oregon. During the preceding ten-year period that would come into our establishment in the form of rough lumber and veneer and plywood. A very small percentage of lumber referred to here as smoothed and surfaced. We do not sell the lumber products to anybody in the form in which we receive them. We use them in the conduct of our business.

(Testimony of Joseph Louis Emanuel.)

The lumber products used are divided into soft wood and hardwood. We do not use any soft wood in the conduct of our business upon which any milling act has been performed in the San Francisco Bay Area.

“Mr. Faulkner: Q. In the period from 1936 until 1940, June 26, the date of the return of this indictment, have you ever had any person, whether a union representative or purporting to be a union representative, or a member of any union group, or of your own group, suggest to you where you should buy any lumber product in any form?

“Mr. Burdell: Object to it as immaterial whether or [569] not this witness has heard that.

“The Court: Sustained.”

During the four-year period mentioned, neither we, nor I, entered into any oral agreement with any person, firm or corporation or any union representative, concerning or on the subject of where or where we should buy or how we should buy any lumber product that entered our establishment. I never knew of any such agreement that related to the cabinet manufacturing industry. During the period 1936 to 1940 material that came into our establishment ordinarily did not bear a union label. No member of Millmen's Unions No. 550 or No. 42 ever refused to work on any material in our establishment during that period of time. No carpenter employed ever refused to install any article fabricated in our shop from material that didn't have a union label.

(Testimony of Joseph Louis Emanuel.)

“Q. Did you ever have any dispute of any kind, character or description with any person on the subject of the type of material that you were using, or the source from which the material came?”

“Mr. Burdell: Immaterial, your Honor, whether or not he had any dispute. I object.

“The Court: Sustained.”

During the period from 1936 to 1940, my corporation was a member of Cabinet Manufacturers Institute and the Commercial Fixture Institute. I just represented the firm and was not personally a member. I know Mr. J. G. Ennes and did during the period 1936 to 1940. I know the position he held in the Cabinet Manufacturers Institute and the Store Front Institute, and would say that he was the whole show. He was with the industry of which I was a part for some years prior to 1936. Members of the Cabinet Manufacturers Institute first commenced its negotiations with organized labor with respect to hours and terms of employment, twenty years prior to 1936. In the 20 years prior to 1935 there were negotiations carried on with unions concerning employment. [570] Immediately prior to 1936, they were in 1935. I recall the circumstances that caused the cabinet manufacturers to negotiate with organized labor in 1935. I think they had a written agreement in 1935. I participated in labor negotiations in 1935 directly with union representatives. In 1936, I did not participate personally in any negotiations with organized

(Testimony of Joseph Louis Emanuel.)

labor. I did not at any time subsequent to 1936 participate in any negotiations with organized labor concerning any contract and know of such contract only by hearsay. Agreements were made with organized labor in 1936 and subsequent, with various unions employed by our industry. I did not see any of the contracts entered into subsequent to 1935. I saw a contract indicating the rate of wages to be 80 cents an hour or \$6.40 a day. That was stepped up to \$7.40 a day, and some specific arrangement had as to what compensation would be received by the manufacturers who entered into a legitimate contract prior to or during the period in which the negotiations were taking place. I do not recall when that contract was entered into. I did not personally negotiate it, but I saw a contract along the lines indicated. I think the wages of the members of millmen's unions 550 and 42 varied—from 1936 to 1940—from \$7.40 to \$8, then finally to \$9 and back to \$8.50. The scale of \$9 was for a week or less.

During the period 1936 to 1940, we employed union men belonging to other crafts. During the same period their rates of wage were likewise changed. I don't think I saw any of the contracts entered into in 1938. I did receive information concerning changes in the rates of wage in that year, from Mr. Ennes. During the four-year period covered by the indictment, our company paid whatever changes were made in the rate of wages of the millmen's union.

(Testimony of Joseph Louis Emanuel.)

In the years 1926 or 1927, our firm did work for Roos Bros. I recall the general work that was being done. Grand [571] Rapids Company did the sports shop on the first floor—they claimed 95 per cent of it. I did not bid on that work. Until I came to court, I did not know the amount Grand Rapids received for that work. We did bid on other parts of the work and had some of the work awarded. The top floor, generally called the fifth floor, we undertook a contract \$18,900. We made that installation. I know a man named Hosken who represented the Grand Rapids, and talked to him. My recollection is that I told Mr. Hosken that I had been on a negotiating committee with the unions prior and that their demands were excessive and we beat them. That was in 1935. I did not have any conversation with Mr. Hosken in which I indicated or stated to him I had been on any negotiating committee in 1936, because I was not. I did not have a conversation in which I said that any agreement on the wage scale, that it was the object of the union that they would not allow outside manufacturers to come in, and that the union would not install that equipment that came from where the wage scale was lower than the wage scale prevailing in the San Francisco Bay Area. I did not have any conversation similar to that with Mr. Hosken, because the fact that Mr. Hosken's work was set up by union labor would indicate that that was not a correct statement. I did not hear Mr.

(Testimony of Joseph Louis Emanuel.)

Hosken's testimony. I was chosen by Roos Bros. to sit in conference at meetings which took place once every week in Mr. Roos' office, where generally present were Mr. Williams, Mr. Fairweather, who was the architect with the Phelan interests who were making the physical changes in the building itself, then there was generally present Mr. Roos, Mr. Kline, Mr. Berkoff, Mr. Parker, and they would bring occasionally in such men whose experience would help us in our problem to lay out a store that would be the last word in color and proper correlation, the bringing of light to be used to the different parts, the arrangement of salesrooms for stock and so on. On several occasions Mr. [572] Hosken was consulted regarding the layout of the first floor—the men's sports section, as that firm had specialized considerably in that particular regard. I would say I had practically no conversation with him about unions or wages or negotiations or agreements, or anything of that kind, but I might add that I could have said, and no doubt did, "Watch your step, a little bit, the unions are upsetting things, the Grand Rapids were generally known to be in bad repute with the union." Something to that effect is what I think I may have said to him. In November, 1937, at the time of this claimed conversation with Mr. Hosken, I knew they had just concluded installation of the men's sports wear. Further knew at the time of that conversation I did not negotiate the 1936 agree-

(Testimony of Joseph Louis Emanuel.)

ment, but had participated in a 1935 agreement. In the 1935 agreement, there was not any discussion about either the exempted list or working on union label goods in this area.

"* * * Do you know, Mr. Emanuel, whether or not in 1935 that was the first occasion that organized labor, after a period of practically fourteen years was able to get a union contract with employers in this district?

"Mr. Burdell: Objected to as immaterial.

"The Court: Sustained.

"Mr. Faulkner: I think it is material to show that organized labor was emerging.

"The Court: I think it is immaterial.

"Mr. Faulkner: Your Honor will not permit me to—

"The Court: No. I do not wish to consume too much time in listening to argument. I would like to have you put in the evidence as rapidly as possible.

"Mr. Faulkner: Don't you think that it is important in this case to show that there was a definite change?

"The Court: I think that my ruling is correct and it stands. Proceed with the examination." [573]

Cross-Examination

By Mr. Burdell:

I stated we employed about 70 men. The number of carpenters fluctuates. The average is probably

(Testimony of Joseph Louis Emanuel.)

25 carpenters. I don't know how many are members of local 42. I don't know whether the carpenters belong to 42 or what union they did belong to. If you ask me how many of them are union men, I would say all of them.

In 1935, when I negotiated the contract I didn't know what union they belong to. I negotiated with union labor. My recollection would be we met with Mr. Kelly, Dave Ryan, Mr. O'Leary, Mr. Wilcox and possibly a few others. I do not know what union Mr. Kelly or Mr. O'Leary belong to. I think Mr. Ryan belongs to the District Council—I could not tell you. I only knew they belonged to a union. I stated the 25 are carpenters, but cabinet makers going out into the field immediately are recognized as carpenters by reason of the fact that they are in the field and have an increased wage, although they have not changed their union. I do not recall the negotiations in 1936. My testimony was I knew there were negotiations in 1936, but I took no part in them. I did not attend any of the negotiations as a visitor nor did I talk to anyone about them. I did not talk to Mr. Ennes about any of the negotiations. I did not talk to Mr. Hart about any of the negotiations in 1936. I did not talk to Nat Edwards in 1936 about the negotiations. I know there was a contract entered into in 1936. I did not know there was a contract entered into in 1938. I heard of negotiations and know that a contract was entered into following the negotiations, only by hearsay. I have never seen the contract. I think

(Testimony of Joseph Louis Emanuel.)

the only contract I saw was right in this courtroom. I did not see one before then. I have seen no contract regarding the 25 carpenters. The rates of wage of those [574] carpenters are determined by Mr. Ennes and the committee with whom he met. He negotiated all of the arrangements or the contracts relating to the rate of wage, with labor being represented on the other side. When the wage scale was concluded it gives the hours of work, how much they would receive for overtime and what would constitute overtime. I got information with regard to all of that from Mr. Ennes. He has telephoned to us if I needed that information. I knew when a rate of wage was to be changed because it ran from one period of time to another—generally May 1st. We generally had telephone calls from Mr. Ennes indicating either one side or the other is objecting to continuing on with the same scale and that generally takes place approximately 60 days before determination of the contract. I recall no conversation or discussions with Mr. Ennes at the time of the termination of the contract, but I might have had. I knew whether or not the rate of wage was to be changed, but Mr. Ennes called up generally advising us ahead of time to watch our steps, "You may get hooked, it is time to consider the termination of the old agreement." He later on called to say that rates had been changed. He told that over the phone. The hours had not been changed any. He told me they have not changed. The same as to overtime. I learned about these

(Testimony of Joseph Louis Emanuel.)

changes from Mr. Ennes. Not necessarily over the telephone—I might see him personally. Sometimes the overtime rates come on for two sections and sometimes they changed at the time of the termination of one contract and commencement of another—I am interested in determining whether there is any change in the overtime rates. We learn that from Mr. Ennes at the commencement of a new contract. Not necessarily over the telephone. I did not have separate meetings to learn about these overtime rates. I mean, substantially, that he called me up and told me about all three at the same time. I know whether some of the 25 carpenters got wages different from the others. Mr. Ennes does not tell about [575] two different wage scales. The distinction between wages that our twenty-five carpenters get is entirely up to me. We pay some more for longer service or more for experience, or the equivalent. As far as information from Mr. Ennes is concerned, they all get a minimum wage. The union does not change holidays from one contract to another. At the commencement of each contract, we have to learn whether or not there are any changes. We learn that from Mr. Ennes over the telephone, or meet him, personally. I, personally, have nothing to do with the payroll. The bookkeeper makes it up. We indicate all men get the minimum scale. Then there is Mr. Smith, Mr. Brown and Mr. Jones, and they get 50 cents bonus and this one gets \$1. All the bookkeeper is told is the minimum wage plus what we call the

(Testimony of Joseph Louis Emanuel.)

key men. We have apprentices. I know there is a rule that provides so many apprentices is part of the agreement that Mr. Ennes negotiates. All of the information pertaining to that could be given to me in maybe two minutes' time, whereas these questions would indicate it was a very involved proposition. It simply involves a minimum wage of carpenters, \$8 a day, or whatever it may be, and that takes in all the mechanics, because they all work from there, and indoor employees get \$1 less than outside men. All the men on the inside cabinet work get the same rate, there being an exception in the case of men who are incapacitated, who are too old to work, they get a special dispensation, and all this discussion could take place between myself and Mr. Ennes in probably one minute's time—maybe two at the absolute outside. Inside mechanics are men that work in our shop—cabinet makers and millmen finishers. Men working in the field are paid \$1 extra, but a cabinet mechanic or finisher takes this rate of wage when he works in the field. The field may be inside, but it is not inside our factory. Men installing work are classified as outside men, they may be inside, they can be finishers or [576] cabinet makers, but they take the outside scale. There is no distinction of the 25 carpenters into inside mechanics and outside mechanics. When I speak of outside men, I speak of a man who is not working in our factory. He might be working in this building. He is inside, but he is on the field and in that event he becomes a car-

(Testimony of Joseph Louis Emanuel.)

pen~~t~~er so far as wages are concerned. I just explained there is a difference between wages paid inside men and outside men. There is no distinction between carpenters' wages. A carpenter does not come into the cabinet shop and take a lower rate of wage. They are not all carpenters. Cabinet makers go outside. Whether a carpenter is outside or inside ~~he~~ gets an outside scale. As I understand it, belonging to the carpenters' union he gets his nine or ten dollars and pays the fee. A cabinet maker gets a lower rate of wage at our shop, and he takes on a dollar a day increase when he works on what we call the outside field. I do not call a cabinet maker a carpenter. Some of the 25 men I have been talking about are woodworkers. I did not take part in the negotiations meeting up to the 1938 contract. It is right that I never saw that contract until the time I entered this court room. I did not say one was never sent to our plant. My testimony is that although one might have been sent to my plant, I never saw it. During the normal procedure one sent to our plant would have been received by my brother-in-law. I cannot say who did see it in the normal course of procedure. My brother-in-law has since passed on. He had charge of the office. I am not in the office at all. I am in the drafting room. I don't know what my brother-in-law might have done with the contract. I know one of these contracts found its way to L. & E. Emanuel Company, but don't know what became of it after it got there. I could not say if it was

(Testimony of Joseph Louis Emanuel)
used in making up the wage payroll, or in answering the questions about apprentices. I did not even know we had it. I know now we had one because we produced it. I do not know if the 1936 contract [577] was ever sent to my company. I do not know it was not sent. I know there was a contract negotiated in the summer of 1939 by Mr. Ennes only by hearsay. To the best of my recollection, Mr. Ennes told me. He told me about the 1938 one and I assume about the 1936. I do not know whether he sent a copy of the 1939 contract to our plant and do not know that he didn't. I did not take part in the negotiations of 1936 leading to the execution of the contract regarding the rate of wage of the millmen. I did engage in negotiations in 1935. I am quite clear it was 1935 and not 1936. I did not have any meeting with Mr. Hart or Mr. Edwards in 1936.

That is my signature on page 2 of Exhibit 179 for identification. I do not recognize the other two signatures there they purport to be J. A. Hart and Mr. Edwards. It could be Nat Edwards. The other could be Jack Hart—J. A. Hart. I am not saying it is or it is not. The document does not refresh my recollection as to whether I engaged in any negotiations relating to a labor contract of 1936. It is still my testimony I did not engage in any negotiations in 1936. I did not say I did not meet Mr. Hart. I said I did not negotiate. I had meetings with Mr. Hart, but I didn't negotiate wages with him. I did have a discussion with him regarding

(Testimony of Joseph Louis Emanuel.)

wages, what we would like to pay labor. There was discussion with Mr. Edwards. I do not think I would call them negotiations. There were discussions, meetings and conversations, talking about labor and labor rates. I delegated Mr. Ennes to attend to negotiations with labor. I did have meetings with Mr. Edwards and Mr. Hart about labor rates. We discussed it. The document does not refresh my recollection about that. I do not even know what the document is.

Thereupon the document was introduced in evidence as U. S. Exhibit No. 179. [578]

"This is dated August 19, 1936.

"Predicated upon a Union Shop condition, in order to effect a settlement of the Wage Rate now before the Board of Arbitration,

"WE SUBMIT TO:

BAY COUNTIES DISTRICT COUNCIL OF
CARPENTERS MILLMEN'S UNION NO.
42 and NO. 550

the following offer:

"Rate of Wage to be Ninety-two and one-half cents ($92\frac{1}{2}c$) per hour, retroactive to June 28, 1936, and shall be applicable to all work, except where contracts have been entered into, or where Bids have been submitted prior to June 28, 1936, which work shall be done at the Rate of Wage as set forth in the Agreement of June 27, 1935. The Rate of Wage for stock sash and doors will be eighty-two and one-half cents ($82\frac{1}{2}c$) per hour.

(Testimony of Joseph Louis Emanuel.)

“This scale of wages will be paid up to March 15, 1937. From March 15, 1937 to June 15, 1938, the above mentioned scale of wages will be One Dollar (\$1.00) per hour. The rate of wage for stock sash and doors will be Ninety Cents (90c) per hour.

“Eight (8) hours shall constitute a regular work day. The regular work day shall be between 8:00 a. m. and 5:00 p. m. Five (5) days shall constitute a regular working week from Monday to Friday, inclusive.

“Time and one-half shall be paid for all over-time after the regular work day period of eight (8) hours, except when double time shall be paid, and except that time and one-half shall be paid for work on Saturday from 8:00 a. m. to 12:00 o'clock noon. No work shall be done on Saturday from 12:00 p. m. until 12:00 a. m.

SAN FRANCISCO WOOD
PRODUCTS ASSOCIATION,
J. A. HART.

CABINET MANUFACTURERS
INSTITUTE OF CALIFOR-
NIA,

JOSEPH L. EMANUEL.
BUILT-IN FIXTURE MANU-
FACTURERS

EAST BAY MILL OWNERS
ASSOCIATION,

D. N. EDWARDS.” [579]

(Testimony of Joseph Louis Emanuel.)

I signed this. I am a little hazy about that being Nat Edwards. I think there are three Edwards. There is Shorty, he is a union man; Nat Edwards is the Lumber Products, and, I think, there are three Edwards. I do not recall meeting with Mr. Edwards in 1936 where we discussed the substance of what is contained in that document very vividly. My recollection about meeting with Mr. Hart to discuss the substance of what is contained in the document is very vague. The Unions were making demands for a greater wage and we in turn felt that the Bay Area could not afford to add this, and we submitted what we considered was a compromise and what we thought was quite generous at the time. We had presented a statement to the Union as to what we were willing to do. Evidently, Mr. Hart and Mr. Edwards and I got together and got up that statement. I assume they sent it over to the Union. I don't know how many meetings I had with Mr. Hart and Mr. Edwards about that. After we sent that to Millmen's Unions 42 and 550 Mr. Ennes took over. It doesn't refresh my recollection a bit as to the Unions my employees belong to. We addressed that to Millmen's Unions 42 and 550. One of those Unions is across the Bay. We have men on both sides. We do work on both sides and along the entire Pacific Coast. I have just one plant, and one too many. I have no recollection I sent it to the union. I thought that after I signed it the unions would receive it. After Mr. Ennes took

(Testimony of Joseph Louis Emanuel.)

over negotiations he handled the whole thing as far as I was concerned. He did not make any report to me about the progress of his negotiations, either in the year 1936 or 1938. I would not say no report whatsoever. He told me about the wage rate when it was concluded, but not during the negotiations. In 1939, he didn't report to me concerning progress of the negotiations. I knew in 1938 negotiations were in progress for approximately two months, resulting in the wage scale. I think I probably would know negotiations were in progress in 1939, relating to the wages. During those two months he made no reports to me concerning progress of the negotiations. I was very muchly interested in this problem. [580] The reason I took part in the meetings with Mr. Hart and Mr. Edwards in 1936 was because I was selected. I was very muchly interested but that was not the reason I was selected. In 1935, I was on the negotiating committee and I was interested then. That I never got any reports from Mr. Ennes concerning the progress of his negotiations was not a lack of interest. If you know what a clam is you know how much you can get out of Mr. Ennes. I didn't ever try to get anything out of him. The only thing I was interested in was dollars and cents in days' wages. The Unions indicate to us how much they want. I know perfectly well when I am paying \$7.50 a day and they ask for \$8.50 they do not mean any more than that, so it is my conclusion that while these

(Testimony of Joseph Louis Emanuel.)

negotiations are going on I am perfectly safe in figuring on their figures, and nine times out of ten maybe, the unions ask for more than they expect to get. When they ask for \$8.50 maybe they expect they will split the difference and take \$8, so during the period of negotiations I will either figure to pay the full amount they have asked or maybe compromise it mentally and do my figuring accordingly. I am not by any manner or means disinterested—it is vital, most important, but what is the use of talking to Mr. Ennes about “What are you doing?” He couldn’t answer that. It is true I use my own judgment as to what I think it might be and sometimes I win and sometimes I lose, but I am vitally interested and very definitely so. After the negotiations, I got the information by telephone or meeting with him.

I don’t recall having ever seen Exhibits 94-2, 93-3, 94-3, from the files of my company.

In 1936, on this agreement we referred to and discussed, but we did not meet with labor. I would say I didn’t prepare it—it doesn’t sound like my language, but I did sign it. [581]

Thereupon three letters were introduced in evidence as “U. S. Exhibit No. 180”, being formerly 94-2, -3, -4, for identification, and were read to the Jury as follows:

(Testimony of Joseph Louis Emanuel.)

“Bay Counties District Council of Carpenters, San Francisco and Vicinity.

April 11, 1938.

“Mr. J. C. Ennis, Secretary
Cabinet Manufacturers Institute
of California, Northern Division

Mr. F. S. Spencer, Chairman
Lumber Products Association of
San Francisco

Mr. D. N. Edwards, Chairman
East Bay Mill Owners Association

“Gentlemen:

“The agreement now in effect between your three associations and the Bay Counties District Council of Carpenters Millmen’s Local Union 42 of San Francisco and Millmen’s Local Union 550 of Alameda County, stipulates (paragraph 24) ‘it shall be subject to change, modification, or termination by either party (after June 15, 1938), upon 60 days notice being served in writing upon the other party.’

“In accordance with the provision we have quoted, you are hereby officially notified that the Bay Counties District Council of Carpenters, acting both for the District Council of Carpenters and for Millmen’s Unions 42 and 550, all signatories to the agreement, that it is our desire and request that certain changes be made in our agreement.

“We are making our request at this time so that we may have ample time to arrive at a mutually satisfactory adjustment of the present agreement before June 15, 1938.

(Testimony of Joseph Louis Emanuel.)

'May we respectfully suggest, in order to promote the establishment of conditions of employment in Santa Clara County and Contra Costa County identical to the conditions that may be established in the San Francisco Bay Counties, that you [582] invite representatives of the employers in these two adjacent counties to participate in the conferences in the establishment of our new agreements. We are referring specifically to the Pacific Manufacturing Company of Santa Clara County and the Redwood Manufacturers Company of Pittsburg.

'We ask that our representatives be afforded an opportunity to meet with representatives of your organizations at your earliest convenience.

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS.

D. H. RYAN, Secretary.'

Then 94-2 is on the letterhead of the Bay Counties District Council of Carpenters and is dated January 31, 1940, addressed to:

"L. & E. Emanuel
2665 Jones St.
San Francisco

'Dear Sirs:

"Our present agreement with you covering hours, wages and working conditions of the cabinet makers and millmen in your employ stipulates (see

(Testimony of Joseph Louis Emanuel.)

Paragraph Thirty-four) that either party to the agreement may, by serving notice in writing upon the other party, enter into discussions regarding any proposed changes or modifications in the agreement to be effective May 1, 1940. This is to officially notify you that the Bay Counties District Council of Carpenters and the Millmen's Unions affiliated therewith desire to discuss with you or your representatives, and if possible negotiate, certain changes in our agreement.

"We would appreciate it if you would notify us what time and place would be convenient to you to meet with our representatives to discuss this matter.

"With best wishes, we remain, [583]

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS

D. H. RYAN,

Secretary.

—With a stencil signature, "D. H. Ryan."

94-4 is on the letterhead of Bay Counties District Council of Carpenters, dated July 21, 1938, addressed to:

"To All Planing Mill Owners and Cabinet Manufacturers in the San Francisco Bay Area Including the Counties of San Francisco, Alameda, San Mateo, and Marin.

"Gentlemen:

"The Agreement between the Cabinet Manufacturers Institute of California, Northern Division

(Testimony of Joseph Louis Emanuel.)

and the Lumber Products Association, Inc., representing practically all of the Cabinet Manufacturers and Planing Mill Owners in San Francisco, and the Bay Counties District Council of Carpenters, Millmen's Union No. 42 of San Francisco and Millmen's Union No. 550 of Oakland, representing the employees has been renewed with no material changes except for an increase in the wage scales. The wage scales for the ensuing year terminating May 31, 1939 were determined by an Arbitration Board, the Chairman of the Board being Judge Walter Perry Johnson who was selected by the Conference Board of the San Francisco Building Trades Employers Association and the San Francisco Building Trades Council. The wage scale for Journeyman Cabinet Makers and Millmen is established at \$1.12½ per hour for an 8 hour day and 40 hour week except in stock sash and door departments, where the scale is established at \$1.00 per hour. The effective date for the new wage scale to become effective is June 15, 1938, with the following stipulation (we quote here from Paragraph 9 of the Arbitration Award): 'The award shall be effective on all new work contracted for after June 15, 1938 subject however, to the proviso (due to unanticipated postponement of this arbitration proceeding) that where bids have been submitted and opened prior to July 10, 1938, and have [584] been based upon the old wage scale, no protection as to such listed bids shall be afforded, unless they shall

(Testimony of Joseph Louis Emanuel.)

have been accepted by the Awarding Authorities on or before the 30th day of July, 1938, which date is fixed as the time from and after which the new agreement shall become and be effective and binding on the parties thereto.'

"If you have work on hand or work in prospect on which your bid has been accepted and on which you expect to be protected, it is necessary that you advise the Bay Counties District Council of Carpenters of the amount of such work and the name of the contractor, builder or owner for whom the work is to be done not later than July 30, 1938.

"Representatives of our organization will be very glad to meet with you at your earliest convenience to take up with you any questions concerning this new agreement and to adjust any questions that might arise in connection with it.

"In conclusion, we desire to take this opportunity to thank you for the cooperation you have given our organization in the maintenance of amicable labor relations in the cabinet shops and planing mill industry and to assure you it is our earnest desire to continue to work in cooperation with you.

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS

D. H. RYAN,

Secretary'.

—With D. H. Ryan's signature stenciled.' "

(Testimony of Joseph Louis Emanuel.)

Redirect Examination

By Mr. Faulkner:

According to my recollection labor negotiations had been going on on the 19th of August, 1936, between Mr. Ennes and members representing Millmen's Unions 550 and 42. [585]

I have no recollection of having seen Exhibit 179. There is no dispute that that is my signature. At no time as President of L. & E. Emanuel Company did I know any more about the matters that were being negotiated by Organized Labor than is indicated in that paper that has my signature. The entire extent of my knowledge of the matters in negotiation between employers and employees was the rate of wages, the time wages became effective, payment for overtime and what constituted a working day.

Mr. Ennes advised me from time to time on the progress of the negotiations with respect to the rate of wages and the hours and overtime. The letter that bears my signature is an accurate resume of the extent of my knowledge of the subject matters that were in dispute with Organized Labor at the time the letter was sent. The paper does not refresh my recollection on having discussed the matter of labor negotiations with Mr. Hart or the other signer of the letter, Mr. Edwards. I was in Court when an employee of mine produced the papers just read by Mr. Burdell. I didn't go through those files before the employee produced them here. I didn't

(Testimony of Joseph Louis Emanuel.)

give them any instructions under the subpoena. Mr. Fisher, my son-in-law, gave the instructions, he is practically in charge of the office. I never read the letters, Exhibit 180.

Recross Examination

By Mr. Burdell:

The photostat does not refresh my recollection concerning conversations with Mr. Hart and Mr. Edwards. I still do not remember those conversations. I do remember that the substance of the document is all that I knew at that time in 1936 about wages, hours and other working conditions of labor. [586].

LEO ROSELYN,

being previously sworn, was recalled for cross-examination:

By Mr. Zirpoli:

I think I have the order covering the remainder of the matters listed in the Invoice, Exhibit 178. These invoices that are on Exhibit 178 have an order number in the content of the invoice and as that order number occurs, I received from the party mentioned below the instructions as to the fulfillment of that order. Those orders were written up in our own hand, but they were written on verbal instructions obtained from the party whose name appears on the invoice and they were written at

(Testimony of Leo Roselyn.)

the time the instructions were received. These are all dated September 6, 1938.

Thereupon the orders were introduced in evidence as "U. S. Exhibit No. 181".

I think in that group there are some installation orders, but they were verbal also, I don't think they are pertinent. They are pertain to the South San Francisco store of J. C. Penney.

Letter dated September 16, 1938, addressed to J. C. Penney Company, signed H. Werdesheim, was thereupon introduced as "U. S. Exhibit No. 182."

Thereupon the witness produced a letter which was introduced in evidence as "U. S. Exhibit No. 182", and was read to the Jury as follows:

"This is a letter dated September 16, 1938:

"J. C. Penney Co., Inc.,
330 West 34th St.,
New York, N. Y.

Att: Mr. Frank Rich,
Traffic Dept.

Re: New Store #1539—So. San Francisco

"Gentlemen:

"We were unable to deliver your Order #49666 for the above [587] new store on September 12th, as there were some fixtures sent from your Vacaville Store on the date named for our fixtures delivery. The Vacaville fixtures were set in the center of the store by the draymen, and until our men had installed them our own fixtures would only have

(Testimony of Leo Roselyn.)

been in the way. Therefore, our fixtures will be delivered immediately upon receipt of orders from our Foreman on the job to do so.

"Trusting the above is in order, we are,

Yours very truly,—

UNIT-BILT FIXTURE CO.

By H. WERDESHEIM."

Mr. Faulkner: So that the examination of Mr. Roselyn is intelligible, will you follow me, Mr. Zirpoli?

Mr. Zirpoli: Yes.

Mr. Faulkner: The exhibits that went in on November 26 on Exhibit 178, which is the invoice of the Unit-Bilt Fixture Company, contained a series of items and in the right-hand corner there is a reference to the order number and the name of a man who gave the order, Mr. Williams, 3196; Mr. Williams, 3195; Mr. Williams, 3197-8. Then the order produced by Mr. Roselyn this morning, they are all dated September 6, 1938, relating to the Penney Company—there is an order number, and the order numbers on these sheets which are similar to the order numbers on the invoices cover substantially the same thing.

Mr. Zirpoli: This is correct."

CHARLES STAUFFACHER.

called as a witness on behalf of the defendants,
was duly sworn, and testified as follows:

(Testimony of Charles Stauffacher.)

Direct Examination

By Mr. Faulkner:

My business or occupation is manufacturer of bank, [588] store and office fixtures and general contract. I have been in that business personally forty-two years. I am president of Fink & Schindler Company, was such between 1936 and 1940. I am not an officer or director of Commercial Fixture Institute. The firm of Fink & Schindler is a member of the Commercial Fixture Institute and was since practically the commencement of that corporation. Prior to that we were a member of the Cabinet Manufacturers Institute. In that connection I knew Mr. Ennes and prior to that had a personal relationship with him in the affairs of Fink & Schindler Company.

During the period engaged in that business we have required a great many materials, among them, lumber in various forms. Between 1936 and 1940 we bought lumber from local dealers and also occasionally carload shipments from the East and North. When buying through local dealers in most cases we know the source of the lumber received. The soft wood in most cases comes from the Northwest, the Northern States, such as Oregon and Washington, and the hardwood lumber mostly comes from the Southern and Midwestern States, or foreign countries. About 80 per cent. of the lumber used in our business is hardwood, in dollars, compared with any other lumber used. About 20 per

(Testimony of Charles Stauffacher.)

cent. of our lumber material would be soft wood. Of the soft wood material none has any milling process performed on it in the San Francisco Bay Area after it is shipped in.

In the year 1936 there was no change in the method of our buying lumber material. In the year 1936 and subsequent to that time I never had any agreement with any Union man or Union Official with respect to, or on the subject of, from whom and at what time or at what place I should buy our lumber material. I never had any discussion that related to that subject matter with any Union officer or agent in that entire four year period. [589]

In the course of our business I employ men who belong to Millmen's Union 42 and 550. Those are not the exclusive union men employed by me. In the years 1936 to 1940 we employed carpenters. I know in the year 1936, an agreement was entered into with reference to the employment of men who belonged to Millmen's Unions 550 and 42. I did not negotiate that agreement with the Union. Mr. Ennes did.

The average men employed in our business during 1936 to 1940 is approximately fifty. In comparison there would be about forty millmen of those employees, and about ten carpenters, on an average. I think it was the same agreement with the carpenters.

During the period of 1936 there was never presented for approval the form of any contract with

(Testimony of Charles Stauffacher.)

the Union. I did not receive from Mr. Ennes a copy of any agreement that was entered into by him. I have never read the agreement of 1936. I know it had to run up to 1938. The final agreement was entered into in August or September of 1938, I did not receive a copy of that agreement. In 1936 I was advised of the change in the rate of wage by Mr. Ennes. I know in the year 1938 there were changes made in the rate of wages through Mr. Ennes. I did not receive any copies of the 1938 agreement, to my knowledge. I have never read the terms of any document that purports to be a contract between Cabinet Manufacturers Institute or Commercial Fixtures Institute and Millmen's Unions No. 550 and 42.

Cross-Examination

By Mr. Zirpoli:

I have been President and Director of Fink & Schindler Company during 1936 to 1940. I knew the 1936 agreement was being negotiated by Mr. Ennes and that he was representing me as a member of the Association. That is my signature [590] under the name of Fink & Schindler Co. on the last page of Exhibit No. 67, it was written by me at that time. I remember appearing there with other members of the Institute for the purpose of signing this document indicating membership in the new Institute. I was there and participated in the meeting. I know what Cabinet Manufacturers Institute,

(Testimony of Charles Stauffacher.)

Northern Division, was and was a member of that Association. It was predecessor of Commercial Fixture and Store Front Institute. I never attended a meeting of Cabinet Manufacturers Institute at which labor contracts were discussed. I do not recall any special meeting for that particular purpose. I do not recall any meeting that I attended of the members, in which negotiations with labor were discussed.

I do not know Mr. Strong personally. In 1936 there was an audit made of our books as a result of the relationship between the Cabinet Manufacturers Institute and the labor unions with relation to the wage scale on the new contract. I was present when the man came there to make the audit and recall his coming. I had a conversation with him at that time. The contract was not discussed. It was not produced. I know the purpose of his audit. We were requested to make out a list of jobs that we had contracted for prior to a certain date, and establish the number of hours that we assumed would be required to complete those particular jobs. I made out that list and he came down and checked that list with me. I do not recall the exact date, it was a certain date we were notified by Mr. Ennes that all jobs prior to that would be adjusted with the Unions. I think he notified that that was the date agreed upon in the contract. I knew it was the date that appeared in the 1936 contract. I knew in 1938 a similar audit was made with rela-

(Testimony of Charles Stauffacher.)

tion to the adjustment of the wage scale as to another date. That date was also a date from the contract newly made, which I knew at the time.

[591]

Redirect Examination

By Mr. Faulkner:

I don't recall of ever having seen Defendant's Exhibit "L" before. I do not recall whether that came into our place of business or not.

OSCAR H. OSTLUND,

called as a witness for the defendant, being duly sworn, testified as follows:

Direct Examination

By Mr. Faulkner:

I now conduct individually my business under the name of Ostlund & Johnson. The firm of Ostlund & Johnson has been in existence since 1909, in San Francisco. From 1936 on, at least, I conducted that firm individually under that name.

The business of the firm is designing, manufacturing and installing complete store equipment, including floor coverings, painting and whatever is necessary to do business in the place. I use various types of material, all kinds required in buildings. I use materials from practically every state in the United States and all over the world.

(Testimony of Oscar H. Ostlund.)

I will say probably 15 per cent of the lumber is soft wood and 85 per cent is hardwood. Those proportions would average up throughout the years. Practically 99 per cent of the hardwood emanates from places without the State of California. Most of the soft wood, I think, comes from Oregon and Washington. We use a lot of redwood. I do not buy any soft woods that have had any milling process performed on them within the San Francisco Bay Area. Practically all, outside of the stock panels, I buy in the rough state, just sawed lumber. Milling was performed in my own place. A very small portion [592] comes into my shop with any milling act on it. Substantially all is rough lumber.

I employ millmen who belong to Millmen's Unions 550 and 42, and did from 1936 to 1940. My firm employs between forty and fifty men. The average of millmen differs from time to time. When we manufacture and prepare the fixtures we employ millmen and when we install them we use carpenters. I suppose the carpenters I employ are members of Millmen's Unions 550 and 42, I don't ask them. I pay a different rate, it is higher than the millmen's rate.

From 1936 to 1940 I was a member of the Cabinet Manufacturers' Institute and later became a member of Commercial Store Front Institute. I became a director and treasurer of Commercial Store Front. I probably was treasurer of Cabinet

(Testimony of Oscar H. Ostlund.)

Manufacturers Institute also, a short time. I was treasurer of Commercial Fixture Institute after its incorporation. I was a member of both of them.

I know J. G. Ennes. Mr. Mullen was president of the Commercial Fixture Institute during the entire time. Between 1936 and 1940, I did not ever negotiate any contract with Union Labor, or with respect to any union man employed in my shop. I never had submitted for approval or any purpose, the form of any proposed contract or actual contract purporting to be a contract between members of Cabinet Manufacturers Institute and Millmen's Unions 550 and 42. I have been in Court every day and heard the contract referred to, a contract in 1936 and various contracts in 1938. None of those contracts were ever submitted to me for inspection.

In the year 1936 I was told a contract was entered into with respect to the terms of employment of the men employed by me in millmen's unions 550 and 42. I got a message, by phone, I guess, the wages that were to be paid after a [593] certain date was a certain amount and I transferred that to the paymaster, and that is all I remember about it. I got that word from Mr. Ennes.

I don't recall any conversation with Mr. Ennes during the progress of those negotiations, except Mr. Ennes had told me from time to time they were working on that with the Union. That is the best recollection.

I knew in 1938 there were negotiations going on

(Testimony of Oscar H. Ostlund.)

with respect to fixing an agreement with men employed in Millmen's Unions 42 and 550 with my cabinet shop. I received advice of the terms of employment of those men from Mr. Ennes. I really don't recall in what form, because Mr. Ennes, if he told me, he called up and said after this date I have to pay the mechanics a certain wage, and I told my paymaster or bookkeeper, whoever was there, what the new scale to the employees was. The men employed knew when their wage rate was changed because they wouldn't hesitate at all to tell us that, "Tomorrow we get more money."

I would hardly say I could remember any report on the progress of negotiations in 1938 from Mr. Ennes, excepting the general things that he was working on an agreement with labor. No one ever advised me whether a labor representative, or member of my own group, that any agreement had ever been entered into as to from whom I was to buy any materials. No one told me that under any arrangement of any kind with the Unions I was to buy my milling lumber from firms and corporations doing business in the San Francisco Bay Area.

In the period from 1936 to 1940, I didn't suggest to anyone in my employ, or to any other person or corporation, from whom they would buy any lumber material of any kind. There was no difference whatever as to my method of buying my lumber material with respect to the places I bought it and the firms [594] I dealt with in 1936. I did not

(Testimony of Oscar H. Ostlund.)

know there existed between any union and anybody any agreement on the subject of where people were to buy their lumber. Before, during and subsequent to 1936, the lumber material I received did not bear the Union Label. I did not ever have any dispute or discussion with any of my employees about working on this material that did not bear the Union Label. I did not ever have any dispute or discussion with any carpenter installing the fabricated material on the subject matter of it being made out of non-union materials.

Cross Examination

By Mr. Clark:

I was treasurer. I signed all the checks. I did not attend any meeting of the Association or Corporation that succeeded it in which labor negotiations were discussed. I suppose I did attend meetings. I don't remember any particular one, I couldn't state when it was. I am certain that whatever meetings I attended there was no discussion of any labor negotiations or problems or any contract with labor.

JOHN E. MULLEN,

called on behalf of the defendants, being duly sworn, testified as follows:

purveyor of any kind of stock that we wanted like that. We do not sell any of the lumber out of that

(Testimony of John E. Mullen.)

Direct Examination

By Mr. Faulkner:

I am president of Mullen Manufacturing Company and have been since it was incorporated in 1915. It was not in existence prior to that in some form before becoming a corporation. Its business is general contracting and the manufacture of stores, office equipment and store fronts. That was its business throughout its existence.

We use many types of material, among which are lumber materials, mainly hardwood lumber. The second classification is [595] soft wood lumber. In dollars we use 25 or 30 per cent of the soft woods against 75 per cent of hardwoods. Hardwood comes from all over the world. Soft woods come largely from the North. We buy little material that has a milling process performed on it in a mill in the San Francisco Bay Area.

We occasionally want a load of, we will say, two by fours, and we order a load sent to the job, surfaced four sides, quarter off, and the mill may inform us they have the two by fours, but not surfaced, so it will be surfaced right away and sent down to the job. That would be a local application of milling. That would not amount to one per cent of our business in a year, practically negligible, but it does occur.

We maintain a lumber yard. In this particular instance it would be delivered directly there by the

(Testimony of John E. Mullen.)

yard to other people, we use it entirely in the fabrication of the various articles we manufacture.

We buy very extensively fabricated materials. We buy them from, for instance, Albany, Indiana, Hoosier Panel Company, from the Southern Mill and Lumber Company of North Carolina, from the General Furniture Company of Seattle, those are primarily the ones that come to mind, but we buy from anyone and everyone that purveys that kind of goods. We buy from Grand Rapids Furniture Company.

Installation of fixtures in the Woolworth Stores is considered an important phase of our business. In connection with that work we use these furnished products or partially manufactured products just mentioned, extensively. All of that comes from outside the State of California. It does not bear a Union Label to my knowledge.

In the course of business in 1936, and on and prior to that, we have employed men who belonged to Millmen's Unions [596] No. 550 and 42—about 75. We employ union men of other crafts. We employ carpenters with particular respect to the cabinet work. They do not belong to Millmen's Unions 550 and 42.

Between 1936 and 1940 we have made a separate contract with those carpenters. The millmen did not do for us any installation of the materials fabricated in our place, that is entirely done by car-

(Testimony of John E. Mullen.)

penters, it was during all of the time. It was true in 1936.

Mullen Manufacturing Company is a member of Commercial Fixture Institute. I am president and director of that Institute. Prior to incorporation I was president several times of Cabinet Manufacturers Institute. I was active in the affairs of both Cabinet Manufacturers and Commercial Fixture Institute.

In 1935 I was on a committee in negotiations with labor with respect of terms of employment. I was not on the committee in 1936. In 1936 I did not personally confer with any representatives of Millmen's Unions 550 and 42 on the subject of arriving at a contract. I knew that negotiations were being carried on on that subject. I felt I was always closely in touch with those negotiations and knew all about them. Primarily it was matters of wage scale, fundamentally, that were being negotiated.

I have been in Court during the period of this trial practically every moment. I knew in 1936 negotiations were being carried on with respect to wages and hours. I think I knew of every demand the Unions made at that time. It is a little difficult to keep these different contracts in mind. My recollection is on that particular negotiation they had not stated what wage scale they wanted; they wanted to revise the wage scale and that was what

(Testimony of John E. Mullen.)

the negotiations started on, to revise an existing wage scale. They progressed [597] a long time before these matters were agreed to.

During the course other demands were brought to my attention that were being made. I was informed they were going to require a Union Label on all materials they were going to manufacture for us.

Cabinet Manufacturers Institute, its members were very much represented at these labor meetings. I was president at that time. Our own employee, Mr. Ennes, represented Cabinet Manufacturers Institute members at these labor negotiations. I gave him instructions not to stand for that at all, referring now to the Union Label requirements on all materials coming in. I told him the business could not operate at all. We did not know that any of our material coming in was labeled, I knew very well it was not.

At a later time I had a discussion with Mr. Ennes about the exempt list. I told him not to stand for it at all. That was point No. 1. He brought it up again subsequently, and suggested that he was able to arrange it in a manner that would probably let our goods and supplies come in undisturbed. He read me a list over the phone, he started off, I think, with patterned lumber and expressions of that kind, and got down to mentioning dowels and quite a list, and asked me if I thought that list cleared us. I told him I could not tell, it

(Testimony of John E. Mullen.)

sounded all right, but he had been in our same line of business for ten years, he knew as well as I did about it, to look off and watch his step and not let anything in there that tended to hamper our operations. Besides this list, he said, "I have a qualification in that that I think clarifies it, anyway." He then read the qualification, which amongst other things spoke of manufactured articles in their completed state not being involved, nor anything that interfered with interstate commerce, and along that general subject that has been read here to the [598] Jury several times, that section particularly that he read of the confirmation, and his suggestion was that this qualification he had put in cleared us entirely, it was not involved in the restrictions that were in the contract. That was my judgment.

Paragraph 16 of the 1936 agreement covers the subject matter; it sounds like the list that Mr. Ennes read. The paragraph following the list is the paragraph that he read to me. There is another, "nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer."

We never had any interference of any kind with our lumber by organized labor. I have never had a labor dispute. I never, that I know of, had any other private or separate agreement with Millmen's Unions 550 or 42 with respect to the movement of material either in interstate commerce or intrastate commerce. The agreement is signed by Cabinet

(Testimony of John E. Mullen.)

Manufacturers Institute, of which I was president. I absolutely did not ever have any private oral agreement with any union man on the subject of the movement of material. I have never had any discussion on the subject of interfering with the movement of lumber in interstate commerce; it has never been raised. I have never had a word of discussion with union men or agents about bringing in here, with the Union Label, manufactured articles made by the Grand Rapids Company and the firms in Seattle and Albany. They never told me anything about that.

When the contract was signed by Mr. Ennes, I do not think I ever read the contract from beginning to end; I knew about it; I did not read it section by section. If this is the original contract I would say that this is the first time I even saw it, but I knew all about it. I knew of it as it was being [599] negotiated. I knew all about the further negotiations with Organized Labor in 1938. I did not participate directly. Mr. Ennes kept me thoroughly posted on all movements. In 1938 they were certainly demanding a change in the existing wage scale. I feel I knew quite well what happened with respect to that particular demand. I was posted on everything that happened. I did not participate in the arbitration. I knew it was arbitrated.

In 1938 the rate of wage was fixed by the arbitrator. I feel that I knew of what was going on all the time. There was a great deal of discussion about the negotiated part of the 1938 contract. All

(Testimony of John E. Mullen.)

of it led to arbitration in 1938. I did not see the contract when it was entered into, that is, the contract was never entered into, it went to arbitration. Subsequent to the arbitration there was a contract arrived at by the arbitrator or an agreement, I don't know about it being a contract, but there was a decision of the Board, I mean that the arbitrator made his award. I knew his award was included in the contract. I know what changes were made in that contract. I never read any of these original contracts. I tried to keep posted as far as I could concerning the progress.

I was a member of the group of men in the industry who were negotiating through Mr. Epnes. In 1938, and after the 1936 contract expired, I had absolutely no private agreement or understanding with any labor organization or labor official, no private understanding of any kind.

I knew very well the situation presented by the fixing of the \$9.00 rate on San Francisco at a time when the Oakland shops were paying \$8.00; I knew what existed in that particular field. The effect to have had a \$9.00 rate for employees for the same union on one side of the Bay with an \$8.00 rate in Oakland is, that it could not be done, you could not operate that way. [600]

Cross Examination

By Mr. Zirpoli:

I was president of Cabinet Manufacturers Association several times and was president in 1936,

(Testimony of John E. Mullen.)

1937 and 1938, and remained president until I became president of the new Institute, in January, 1939. I was not on any labor negotiating committee between the period 1936 and 1940. I was on none of the negotiating committees for a contract. There were meetings called of the Institute while I was president. Between 1936 and January, 1938, I would say, I would have to guess at it, probably five or six meetings in a year were called. I would say five or six meetings in 1936, 1937 and 1938, I am guessing at it.

I don't know if minutes of those meetings were kept. I never heard minutes of the previous meeting read. We had only one employee, and that was Mr. Ennes, who was secretary and manager. The main reason for having Mr. Ennes on the job was to take care of our labor contracts as an Association. He had nothing to do with the sale of the material for any of the other members or with the actual business. The primary reason he was employed was for labor negotiations. Anything else that came up in the way of industrial matters that affected our industry was his business. All of his time was supposed to be devoted to that.

I recall meetings in 1936. The labor contract of 1936 was not discussed as a business of the meeting. Whenever we entered into a contract with the millmen it invariably followed we were going to make a contract or agreement with the carpenters.

The biggest contract that affected our industry

(Testimony of John E. Mullen.)

in 1936 was with the millmen. At the five or six meetings of the Association during 1936 the contract was an incidental matter of discussion, any time two members of our Institute met at a meeting or on the street or in a restaurant or any place it was fundamentally a subject of conversation. [601] Incidentally we discussed it at the meeting. It would be the point of view, if there was anything discussed at these meetings more important than that contract. The contract was taken care of. We had definitely taken care of it.

We discussed the relation between the Cabinet Manufacturers Association and the Architects Institute, who introduced legislation in Sacramento. It affected our business very much. Any time a group of cabinet manufacturers met in a meeting they would certainly ask how they were getting along with the negotiations and what do you think it is coming to? We would discuss that any time we met. So far as understood there was no terms of the contract at that time and we were not discussing terms of the contract. Mr. Ennes consulted me from time to time with relation to the contract.

I didn't specifically have a conversation with respect to the sending of copies of the contract to each of the members of the Association. It stands to reason that the members of the Association would be informed. I believe a copy of the contract was discovered in my office and placed in Court. I would not know if I had a copy of the 1936 contract in my

(Testimony of John E. Mullen.)

office, because if the 1936 contract, which controlled the wages of employees and working conditions was superseded by another, the old one was disposed of; it is through and no more use.

I have not the slightest doubt but what any contract that was entered into I knew all about it. I discussed every feature of each of these contracts with somebody at sometime. The payroll was the primary feature of phase discussed with other members of the Association. I might have discussed the exempt list with a fellow member. I would imagine I would discuss anything of interest to the Association. I gave the substance with relation to the exempt list in part to Mr. Ennes, the best I could. To my mind it was an important feature in [602] the contract.

I could not name now a specific instance when I talked about the exempt list to any individual or group of individuals of our Association. I remember no discussion of the exempt list taking place in any of the meetings that were held. I have no recollection of the exempt list ever having been discussed at any of these meetings between 1936 and 1940. I said I didn't remember a single instance of our lumber being interfered with. He addressed that to me personally. I did hear of interference with the bringing in of lumber on the part of the mill-owners, I heard of it. I could not tell you if it was common knowledge in our industry.

The character of lumber used in our industry is

(Testimony of John E. Mullen.)

essentially rough lumber. We use surfaced lumber also; matched and beaded lumber, tongue and groove, some panels, veneers and plywood.

It is important to my industry to get plywood from the great plywood centers of the country, their price is more favorable, in any event. We get plywood largely from the Northwest. That is largely true of the other woods used in our industry.

Plywood is when the lumber is cut into very thin pieces of veneer and then put into a heavier piece. This lumber comes into our shop and we mill it and mold it in our shop. We have machinery and equipment for that purpose.

I am president of Mullen Manufacturing Company.

Redirect Examination

By Mr. Faulkner:

We mill and mold lumber entirely for our own use in our own products, not for sale as lumber or milled lumber or anything of that type. In addition to the rough lumber re- [603] ferred to, and plywood, we also partially manufacture articles that we install in the fabricated articles we sell. We consider in very substantial quantities. Those are the articles referred to that came from Seattle and Albany and the Grand Rapids people.

I recall that Mr. Wine testified and that he interviewed me in 1940. I had a conversation with him, he introduced himself properly. As I recall the conversation I did not tell Mr. Wine that I knew of

(Testimony of John E. Mullen.)

any verbal agreement with the Institute concerning the movement of either millwork or patterned lumber or any article. I did have a conversation concerning the movement of lumber. Mr. Wine brought up the subject of the stoppage of milled lumber and I told him that I had heard that they had stopped the lumber from coming in. We discussed that line which might be connected up by referring to an open situation. I think Mr. Wine told me that they operated there under what he termed a Bell System, and he said he didn't think that the Bell System was predicated upon a legal foundation, that they were going to investigate that Bell System and that was, generally speaking, the method of how he covered it, and I did know, or did hear or had heard, that lumber had been stopped by the Unions. I did not know what the Bell System was, except as he explained it to me. From what little he did explain it was some system developed by somebody, naming it the Bell System, which they had put in operation in Oakland. That is sketchy, but is as near as I can clear it, because the conversation was sitting and visiting in my office and I am just giving the best recollection I have of it.

I don't recall Mr. Wine ever asked such a question that there was a verbal agreement with the Institute concerning the movement of mill work or lumber. I think I volunteered the source of my information. I told him that the salesmen who were [604] selling us for the Pyramid Lumber

(Testimony of John E. Mullen.)

Company, that was the first mention that I had heard of it and I think he said this lumber had been stopped in Oakland.

From 1936 to 1940, I saw lumber salesmen all day long, you might say. During that period no lumber salesmen told me that any material that Cabinet men were using had ever been stopped by anybody, except the milled lumber that you speak of. I don't think we went into whether that was for a cabinet builder or a mill, it was simply stated they had stopped millwork in that area. We didn't go into the particulars as to the run of it or what particular kind of millwork it was.

A planing mill, generally speaking, takes the lumber as it is manufactured at the sawmill, which primarily is a matter of boards simply cut out of a log and they are in that rough form, and run that lumber into patterns of any kind, whatever they want to run it into. When they get through with it, it becomes finished millwork. In the form of finished millwork it is for sale, but has not reached its ultimate use. When we get lumber, in whatever form, it never reaches its ultimate use until we get it fabricated into some finished article to install. Lumber that we use has reached its ultimate use in the same way that lumber has reached its ultimate use in the building of a home or office building, the same situation, it would be the same thing.

(Testimony of John E. Mullen.)

Recross Examination

By Mr. Zirpoli:

We buy counter fronts from the Hoosier Panel Company in Albany, Indiana, completely manufactured so far as that piece is concerned; we still have to fabricate it to make up the manufactured article at the plant. We buy the same character of thing from General Furniture Company in Seattle.

I had a conversation with Mr. Wine about the Bell System. I don't know if it was a price-fixing system, I understand it was connected with the stoppage of lumber. I did not [605] have any conversation about price-fixing with the Commercial Fixture and Store Front Institute that I recall. That matter was not discussed at all in any of the meetings of the Cabinet Manufacturers. Prices were never discussed at any time. Prices never entered into either the Cabinet Manufacturers Institute meeting or the Commercial Store Front and Fixture Institute.

"Did you tell Mr. Wine that the local mill operators in San Francisco have a verbal agreement with the Millmen's Union of San Francisco and Oakland that lumber could be cut and patterned only in local mills which pay the local union wage scale since the mills in Northern California and Oregon where lumber is cut and patterned operate upon considerably lower wage scales than paid in San Francisco?

(Testimony of John E. Mullen.)

"A. That was a topic of our conversation about lumber and about its being outside of San Francisco, but we never touched on the matter of a contract or agreement running between the Institute or anybody else."

I didn't refer to a verbal agreement with the local mills and unions in San Francisco and the mill operators, I referred to the fact that the unions had stopped the flow of lumber and had placarded it with signs and refused to let it be unloaded, and our conversation was along that line and not in reference to agreements or contracts. We didn't go into the matter of agreements or contracts, we didn't talk about agreements and contracts. We only had this one conversation, maybe two. I saw him, I think, twice.

I am giving Mr. Wine's conversation with me just as the reporter might read to you here. Limited to agreements, the answer would be No. I didn't talk to Mr. Wine about agreements with those unions, whether written or verbal. Price was not an element in our meetings.

Cross Examination [606]

By Mr. Routzohn:

The only lumber I testified as having been stopped was in a shipment or shipments from the Pyramid Lumber Company; I think we were dealing with lumber generally. I think the Pyramid Lumber Company lumber was mentioned, I just remember

(Testimony of John E. Mullen.)

the young fellow that comes every two weeks from the Pyramid. I haven't any idea if the Pyramid was a non-union mill. I only know they sell it to me. I wouldn't know whether they get a commission.

Lumber purchased through Pyramid Lumber Company largely was Klamath Falls shipments, not necessarily originating at that point, but it was from Klamath Falls. I think coming through Klamath Falls, that would be stretching it over a period of four or five years. I didn't know that it was unstamped, non-union made. I don't know whether it was stamped or not. The question whether it was stamped or not was never raised.

Cross Examination

By Mr. Zirpoli:

The lumber purchased was simply surfaced, rough lumber, surfaced two sides.

WILLIAM P. KELLY,

called on behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Routzohn:

I have lived in Alameda since 1910, with the exception of one year I lived in Oakland, and some nineteen months that I went into the Army. At the

(Testimony of William P. Kelly.)

present time I am the apprentice co-ordinator for the Bay Counties District [607] Council of Carpenters. That is a position for coordinating all the various apprentice schools, and getting in touch with the School Boards and all the related matters connected with training an apprentice to be a carpenter or millman or whatever he is training to be. That is connected with not only the millmen's contracts but all the contracts within the Bay Counties District Council.

I am a millman by trade or profession and have been since 1908, working in planing mill and cabinet shop. I started as a carpenter's apprentice, but did not stay with that long, I went into a mill and have been there ever since. I belong to Millmen's Local Union No. 42, located in San Francisco. It is chartered by United Brotherhood of Carpenters and Joiners of America and affiliated with Bay Counties District Council of Carpenters and the California State Council of Carpenters. I was president of Millmen's Union 42 for three or four years, and secretary for five or six weeks. I was president, I believe, in June, 1933, about three years that time, then there was an intervening year, and I was president again for another year. I served as negotiator for Millmen's Union 42 many times, first in 1932 in San Francisco. I was negotiator in 1935, 1936, 1938, and again at the present time, 1941.

There was an agreement drawn in 1935, between Millmen's Union 42, The Bay District Council and

(Testimony of William P. Kelly.)

the millmen in San Francisco. Exhibit 14-8 for identification, dated June 27, 1935, is a photostatic copy of that agreement. It was a negotiated agreement.

Thereupon the document was introduced in evidence as "Defendant's Exhibit N" and was read as follows:

"Agreement of Wages, Hours and Working Conditions June 27, 1935.

"This Agreement is a voluntary Agreement entered into in [608] good faith by all parties who stipulate that they have full authority to bind their organizations to the terms hereof, including that of the duration of the Agreement, by signing this Agreement.

"This Agreement is a short form of Agreement and may be modified by the Agreement Committee by mutual consent of the Committee. The Agreement Committee to be as follows:

"Representing the Employers:

M. John Mullen and

Mr. F. S. Spencer

"Representing the Employees:

Mr. D. H. Ryan and

Mr. Chas. Helbing.

"1. The member firms of the San Francisco Planing Mill Owners Association and the Cabinet Manufacturers Institute of California, Northern Division, shall operate what is commonly known as "Closed Shops" under the following conditions.

(Testimony of William P. Kelly.)

"2. Eighty (80) cents shall be the minimum hourly rate of wages for Journeymen in Planing Mill Department and Cabinet Department.

"3. Seventy (70) cents shall be the minimum hourly rate of wages for Journeymen in Stock Sash and Door Department.

"4. Eight (8) hours shall constitute a regular work day. The regular work day to be between 8:00 A. M. and 5:00 P. M. Five (5) days to constitute a regular work week from Monday to Friday, inclusive.

"5. Time and one half shall be paid for all overtime after the regular work day period of eight (8) hours except when double time shall be paid, and except that time and one half shall be paid for work on Saturday from 8:00 to 12:00 M. which shall constitute overtime work. No work shall be done on Saturday from 12:00 M. to 12:00 P. M.

"6. Double time shall be paid for work on Sundays and holidays. Recognized holidays being New Year's Day, Decoration Day, Fourth of July, Labor Day, Admission Day, Thanksgiving Day, [609] and Christmas Day.

"7. When two shifts are worked in any twenty-four hours, shift time shall be straight time.

"8. When three shifts are worked, eight hours shall be paid for seven hours, work for the second and third shifts.

"All questions, differences and other matters of mutual concern coming within the scope of this

(Testimony of William P. Kelly.)

Agreement, shall be submitted to a joint committee for consideration, and it is agreed that pending the decision of the joint committee, neither party to this Agreement will take any action that will in any way delay or interrupt the orderly conduct of the business interests herein represented.

"The composition of the matters pertaining to this Committee to be determined by the Agreement Committee hereinbefore mentioned.

"Work in progress and work for which contracts have been entered into prior to June 27, 1935, may be completed at a wage rate of seventy cents (70c) and sixty cents (60c) per hour for the respective classifications mentioned in Items 2 and 3 at eighty cents (80c) and seventy cents (70c) per hour respectively. This work to be certified by a Committee having one representative each for the Employers and Employees. This Committee is here authorized when they deem it advisable and where agreeable to the specific shop to agree to and certify a definite date on which the new rate is to become effective or to determine the number of man hours that may be employed under the old rate before the new rate becomes effective, provided that under any and all conditions the basis of such determination shall be work in progress and contracts entered into prior to June 27, 1935.

"This Agreement is effective June 27, 1935, and is for a period of not less than one year from that date and shall continue to remain in full force and

(Testimony of William P. Kelly.)

effect thereafter, excepting [610] that same shall be subject to change or modification or termination by either party upon sixty days' notice being served in writing upon the other party.

**JOINT COMMITTEE OF SAN
FRANCISCO PLANING
MILL OWNERS ASSOCIA-
TION and**

**CABINET MANUFACTURERS
INSTITUTE OF CALIFOR-
NIA, NORTHERN DIVISION**

By J. G. ENNES,

Secretary.

**UNITED BROTHERHOOD OF
JOINERS & CARPENTERS
OF AMERICA, MILLMEN'S
UNION No. 42,**

By WILLIAM P. KELLY

CHAS. HELBING

OTTO W. SAMMET

**BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS**

By D. H. RYAN,

Secretary-Treasurer."

The negotiations started along in the Spring and the latter part of May they broke down and the men went on strike, for about two weeks and then there was an arbitration agreement arrived at; but before the Arbitration Board was finally selected and

(Testimony of William P. Kelly.)

proceedings started there was an agreement reached which is the agreement you just read.

Mr. Ennes was representing both groups at that time, that is, he signed for both groups but the Committee composed quite a few parties. Some of the men who represented San Francisco Planing Mill Owners in the negotiations were Fred Spencer, Jack Hart, Elmer Anderson, I believe at that time the secretary of the Association was Mr. Williamson, that is what I remember. I remember Mr. Emanuel being there, Mr. Mullen, and of course, Mr. Ennes. That did not represent all of the Planing Mills in San Francisco.

At the time that agreement was signed with the Planing Mill Owners Association there were a number, quite a few, other planing mills in San Francisco that did not sign. That [611] is also true with reference to the cabinet shops. I am unable to give the number of them, except for some rough estimate. The agreement calls for what is termed "A closed shop." After it was signed in Oakland there were certain mills in Oakland signed a similar agreement, not that one but a similar agreement. There were also mills operating in Oakland subsequent to this time which did not sign any similar agreement.

After this agreement there was a notice signed, calling for negotiations for a 1936 agreement. A certain notice was served on the members of this 1935 contract, the mill owners and the cabinet shop-owners and by the unions, asking for a change in

(Testimony of William P. Kelly.)

the contract. I could not tell when that was served without seeing the notice. It was served in the Spring of 1936. After that notice was served the regular routine was followed. Committees were appointed, we had our own committee and we met with the Committee from the Mill Owners. I do not know how they formed their committees.

William P. Kelly, Emil Ovenberg, Otto Sammet, and I think there were others come in at the meeting at times, representing the unions, and of course, D. H. Ryan represented the District Council of Carpenters. J. A. Hart of Lumber Products Association, D. N. Edwards for the East Bay Mill Owners, J. G. Ennes of the Cabinet Manufacturers Institute of California, Northern Division, represented the Mill Owners.

The 1935 contract only pertains to Local 42, and in the 1936 contract Local 550 was represented as well. 550 is the Millmen's Union located in Oakland. Otto Sammet served with me, representing 42. Messrs. Ovenberg and O'Leary represented 550. I would say the negotiations started along in the latter part of the Spring and continued through the Summer. We signed an arbitration agreement but before the proceedings ever started we arrived at an agreement which cancelled the [612] arbitration agreement. Arbitrators were named prior to arriving at our agreement. Exhibit 131 is the negotiated agreement.

I had seen another contract with clause 16 in, in.

(Testimony of William P. Kelly.)

different forms, parts of these provisions were in the 1917 agreement and in the 1903 agreement.

"U. S. Exhibit 70" for identification is one form of the 1917 agreement referred to.

Thereupon typewritten copy of the 1917 Agreement was introduced in evidence as "Defendant's Exhibit O", being Articles of Agreement between the San Francisco Planing Mill Owners Association and the Building Trades Council of San Francisco, and the following portion was read:

"Article 2, section 1:

"It is agreed by the Building Trades Council that they will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or are paying less than the wage scale hereinbefore quoted, or employing other than union mechanics.

"Sec. 2. These conditions do not apply to the following materials coming directly from the saw mills, to-wit:—

And it mentions flooring and certain items in connection with flooring, ordinary siding, stepping and surfaced redwood, and it refers to dimensions of the lumber."

Thereupon "Articles of Agreement between the San Francisco Planing Mill Owners Association and the Building Trades Council of San Francisco, effective June 10, 1903", was introduced in evidence as "Defendant's Exhibit P" and the following read:

(Testimony of William P. Kelly.)

"I read from article 2 of the 1903 agreement:

"Sec. 1. It is agreed by the Building Trades Council, that they will refuse to handle any material coming from any mill [613] or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or employing other than union mechanics.

"Sec. 2. These conditions do not apply to the following materials coming directly from the saw mills, to-wit:—

Mentioning then dimensions, flooring, ordinary siding, stepping, surfaced redwood.

"Section 3: "These conditions shall apply not only to mills within the City and County of San Francisco, but to all mills in the State of California, as well as those of all other states."

"Defendant's Exhibit Q" for identification is "By Laws and Trade Rules, Bay Counties District Council of Carpenters", adopted August 5, 1925, and such document was introduced in evidence as "Defendant's Exhibit Q" and the following portion read:

"Extract of Agreement Made With Mill Owners.

"The following material does not need to bear a stamp, it being stock material; if, however, it is manufactured in this city, it must be stamped. It is agreed that every piece of material milled must be stamped immediately after being sent through the machine, before it is stowed away or used.

(Testimony of William P. Kelly.)

“ARTICLE II.

‘Section 1. It is agreed by the Building Trades Council that they will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing Trade Rules, or are paying less than the wage scale hereinbefore quoted, or employing other than Union mechanics.

“Sec. 2. These conditions do not apply to the following materials coming directly from the saw-mills, to-wit:”—

“Ordinary siding, flooring, stepping, surfaced redwood and the dimensions as to them. [614]

“Sec. 3. These conditions shall apply not only to mills within the City and County of San Francisco, but to all mills in the State of California, as well as those of all other States.’ ”

I heard the testimony of Mr. Ennes. I believe the clause just read in evidence from the 1917 Agreement is the clause he referred to as having to do with exemptions. The manufacturers called our attention to the clause in the '17 Agreement.

As near as I can recall it was Jack Hart who asked for inclusion of similar terms in the 1936 Agreement. I would say Mr. Ennes concurred in it.

Under the 1935 contract there had been many what we considered violations of that agreement in the use of the Union Stamp by the employers. Our men were required, not exactly required, but asked,

(Testimony of William P. Kelly.)

to work on material that was partly fabricated and when they finished the fabrication to put the Union Stamp on it, and the Union Stamp is very important to us, and we objected to it. Of course, the employers had objections to certain things too, but there was some of this stuff that they wanted us to handle without having a stamp on. We wanted, of course, to have the Union Stamp on everything that we handled and there were certain things that they called our attention to that they had to use that did not bear the Union Label and there was no way of getting them with the union label on them, and that was what brought in some of these items like dowels, panel stock. Of course, we objected to including panel stock for the reason that part of it we could manufacture here in the mills ourselves and put the label on it ourselves rather than have it brought in partly fabricated. However, it finally went in over our objection. The only company making stock panels around here, of any amount, was the Pacific Manufacturing Company in Santa Clara, but we realized they could not possibly make enough stock panels to supply this market. [615]

Pacific Manufacturing Company used the Union Label at that time. They signed up in May, 1936. They didn't have the same wage scale.

Very few veneers are made here, it is too expensive to make them here. They can be made here, but not sufficient quantities. Machine-carved,

(Testimony of William P. Kelly.)

pressed and embossed moldings are not made here and we knew of no place to get them with the Union Label on. The doors, pine, redwood and Philippine Mahogany and the two-light windows, we very definitely objected to having to use these doors. They would bring these one-panel doors into the shop and expect the men to make two or three panel doors out of them. They would come in as a complete article and just placed a rail across the center, or two of them, and made two or three panel doors out of them, and expected us to put the Union Stamp on them. We objected to that, but had to agree that possibly the plants around here didn't have the proper machinery to manufacture enough doors to complete all the jobs in this area.

We finally agreed to it after they had insisted that these doors should go on the exempted list.

The two-light window is the most common window that is used. We objected very violently to that type window being included, because we thought we could make them here, but it went in anyway over our objections. The rest of this exempt list, lumber, rough and surfaced, sheathing, flooring, siding and clapboard, stepping, T & G, that is the part that was lifted from another agreement that you see there, the 1917 and the 1903 agreement. That is what we term unstamped or non-union materials.

Our principal objection at that time was that

(Testimony of William P. Kelly.)

taking non-union articles and doing some work and after doing a small portion of work, putting the stamp on them. It was [616] the showing made by the employers that some of those articles could not be procured with the union stamp on them that led to the exempt list. They dug up this old exempt list from the 1917 and other agreements and produced that, saying that we had done that formerly and giving that as a reason why we should do it again. We agreed to it.

The stamp is a rubber pad with a top of wood that you stamp with and there is the label. The label is the registered trade mark of the United Brotherhood of Carpenters and Joiners. A label is what goes into the stamp that is stamped on the material. The stamp is a notice to every union man what the material is. It has a significance that is very important to every union man and to their friends. The stamp is put on for a notice to a union man that it is union made. For instance, if I walk into a store and want to buy a suit of clothes, the first thing I ask them, if there is a union label on it; or any other item, and naturally we expect the other union people to do the same thing with our particular items. It is also a means used for organizing unorganized people. Certain plants when they find that people are walking into their plant and asking for a union-made item and they can't produce it, start hiring union men or signing a contract with a union, so they can procure a stamp and put it on their material. Further than that it

(Testimony of William P. Kelly.)

is part of the obligation that any union man takes when he becomes a union member, he obligates himself to buy union-made goods wherever he can. That is part of the obligation.

Exhibit No. 17, Page 56, paragraph B of Section 60 is a facsimile of the label of the United Brotherhood of Carpenters and Joiners of America.

There is no such thing as a local stamp. The label of the Brotherhood is what we refer to as the Union Stamp. [617]

The obligations of membership regarding work done or the use of the Union Label comes in there several times. I will read an excerpt from it:

"I promise to abide by the Constitution and By-Laws—and the will of the majority—observe the local trade rules of this Order—and that I will use every honorable means to procure employment for Brotherhood members.

"I agree to ask for the union label and purchase union-made goods and employ only union labor when same can be had.

"That covers that part of it; that is where I said that 'I promise to abide by the Constitution and By-Laws'—that brings me back to this.

"Q. What is there in that section referring to the label and the use of it?

"A. That is by the members. It says in paragraph N of section 60, on page 58:

"It shall be the duty of all District Councils, Local Unions and each member to promote the use of trim and shop-made carpenter work, hotel, bank;

(Testimony of William P. Kelly.)

bar, store and office fixtures, and of church, school, household furniture, etc., and to make it generally known to the members of the Local Union that it is necessary to all mill and shop members and the United Brotherhood that products made in factories, shops or mills where only members of the United Brotherhood are employed should be installed by fellow-members.' "

They have to have an agreement of employment of union men in order to have the label placed on the products coming from the mills. That was the agreement that was introduced the other day in order to get the label. The 1936 contract was to be in operation for about two years from the effective date.

Subsequent to adoption of the 1936 agreement we served notice on employers we desired a change in the contract [618] in accordance with the terms of the agreement. Exhibit 180 is a copy of it.

Subsequent to the notice negotiations took place. I was appointed on both Conference Committee and Negotiating Committee. The Conference Committee is the committee that deals within the unions themselves; that is between 42 and 550 or any other union involved, and then that Committee appoints from its members the Negotiating Committee, who meet with the employers.

I was appointed on the Conference Committee by Local Union 42, the joint Conference Committee selected me as one of the Negotiating Commit-

(Testimony of William P. Kenly.)

tee, and I served. It is my recollection negotiations began quite soon after the notice of April 11, 1938. We agreed on quite a few of our differences. When we go into negotiations and what we can agree upon immediately, that is set aside, and when we get down to the tough ones that takes more time. The tough ones in this particular instance were wages and hours. The provisions in the contract were they wanted an increase in wages and a shortening of hours. The employers didn't accede immediately, they never do. We never did reach a complete agreement, we did agree on the majority of the clauses but the few that were left were submitted to an Arbitration Board.

Thereupon Arbitration Agreement was introduced in evidence as "Defendant's Exhibit R", and was read as follows:

"ARBITRATION AGREEMENT

"1. In the event negotiations fail in the adjusting of any or all differences in the Employer-Employee Agreement of Wages, Hours and Working Conditions, Millmen's Union dated September 21, 1936, then the parties hereto agree to settle such unadjusted differences by arbitration.

"2. It is stipulated and agreed that such conditions of [619] employment as may be agreed upon on or before going to arbitration, or during arbitration, shall not be subject to arbitration, and that all conditions of employment mutually agreed upon on or before going to arbitration, or during

(Testimony of William P. Kelly.)

arbitration, shall be incorporated in and made a part of the award and findings of the Arbitration Board.

"3. The Arbitration Board shall hand down its award not later than June 15, 1938, and shall be effective as of June 15, 1938.

"4. In the event a lower hourly rate of wage is negotiated or awarded, then all work in progress and all contracts in hand, even though not started before June 15, 1938, shall be completed under the existing hourly wage scale.

"5. In the event a higher hourly rate of wage is negotiated or awarded, then all work in progress and all contracts in hand, and all bids opened before June 15, 1938, shall be completed under the existing hourly wage scale.

"6. This work is to be certified by a Committee having one (1) representative each for the respective Employers Association and Employees. This Committee is hereby authorized, when they deem it advisable and where agreeable to the specific shop, to determine a date on which the new rate is to become effective. The list of work in progress, contracts in hand, and all bids opened before June 15, 1938, shall be filed with the Committee not later than June 22, 1938.

"7. In any event, no protection shall be afforded on listed bids that have not been accepted in writing by an awarding authority by July 15, 1938.

"8. The Arbitration Board shall be the Arbi-

(Testimony of William P. Kelly.)

tration Board established by the B.T.E.A.-B.T.C. unless some other arrangement is mutually agreed upon. Copy of the B.T.E.A.-B.T.C. arrangement is attached hereto for reference. The expense of arbitration to be borne one-half by the Employer group and one-half by the Union Group. [620]

"9. It is stipulated and agreed that Union conditions of employment as provided for in the present Agreement between the parties to this Agreement, shall be continued, and not be subject to arbitration.

**BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS**

D. H. RYAN

**UNITED BROTHERHOOD OF
CARPENTERS AND JOIN-
ERS OF AMERICA MILL-
MEN'S UNION 550**

E. H. OVENBERG

C. H. IRISH

W. C. O'LEARY."

**UNITED BROTHERHOOD OF
CARPENTERS AND JOIN-
ERS OF AMERICA MILL-
MENS UNION 42**

W. P. KELLY

A. W. EDWARDS

**LUMBER PRODUCTS CON-
FERENCE OF SAN FRAN-
CISCO**

J. G. ENNES

(Testimony of William P. Kelly.)

I was selected by the Committee to serve on the Arbitration Board as a technical advisor. D. H. Ryan, secretary of the Bay Counties District Council of Carpenters, served on the Committee representing the Union. J. A. Hart and Elmer Anderson represented the employers, Judge Walter Perry Johnson was the neutral arbitrator.

We finally reached an arbitration award. Before the award was finally signed there was an agreement as to the inclusion of what is known as Paragraph 8. Everybody agreed to that paragraph who signed it. I participated in the negotiations which led to the sending of a certain statement or language of the award to Judge Johnson for his approval.

In the arbitration award itself we discussed this matter as to the conditions that we were confronted with in the application of the award. We have unions on both sides of the Bay, signed up to the Arbitration Agreement, subject to the finding, and only the mill owners and cabinet shop owners on the San Francisco side, so it seemed necessary to try to arrive at some clause to be inserted in the award to take care of that situation, both sides of the Bay, if possible. That was mailed to Judge Johnson.

The reason of that was we would have the Planing [621] Mill Owners and the Cabinet Manufacturers on this side of the Bay paying \$9.00, competing with mills paying \$8.00. We discussed this

(Testimony of William P. Kelly.)

in the Arbitration Board as to what would be put in there, and discussed the wording of the clause that it was contemplated inserting. Judge Johnson finally told us, "Now you fellows go ahead, get up this and write up something and submit it to me and I will see what I will do with it," and that is the origin of that particular letter. We went and discussed the matter and finally wrote that letter to Judge Johnson.

Mr. Nat Edwards was not sitting in at the arbitration. He sat in during all the negotiations. He represented the Wood Products, Incorporated, an Association of mill owners of the East side of the Bay. There was some question raised as to whether the arbitration award applied to Mr. Edwards and the mill owners he represented, and that is what gave rise to Section 8.

There was another reason in addition to that as to asking that the same working conditions be complied with. There were other mills and cabinet shops in the area which were not organized, that is; they were non-union plants and it was designed, of course, to cover those also.

We were not arbitrating for the Northwest. The paragraph referred to conditions as existed in the territory covered by the Bay Counties District Council of Carpenters. After the arbitration award was made it was accepted by the union men, it was for \$9.00 a day. It was accepted by the men who had entered into the Arbitration Agreement. There

(Testimony of William P. Kelly.)

was a small group of mills, eight or ten, at the most, represented by Mr. Edwards, which operated in the lower end of Contra Costa County that accepted it. The Wood Products did not accept it.

There were considerable negotiations I was not [622] involved in through Associated General Contractors and also the Building Trades Employers Association. The original basis of arbitration was on the Building Trades Employers Association set-up, which we were parties to, with whom we had an agreement to avoid all industrial disputes. We didn't get the thing straightened out in so far as Oakland was concerned. It came up to October 1st and the men in Oakland went on strike; they stayed out on strike about two weeks. There were negotiations following the strike. There were attempts made naturally to sign the Oakland side to \$9.00, but that was not successful.

There was some kind of an offer made, I don't know from my own personal knowledge just where the offer came from, that the San Francisco Union would accept \$8.50 and the Oakland Union would accept \$8.50, but an arrangement was being made whereby the \$8.50 would also apply to Contra Costa County and Santa Clara County, making a uniform wage in six counties. They were not in one unit. There were several different contracts, but they were practically uniform. All accepted the \$8.50 for a basic wage and thereafter that wage obtained in those six counties. I think I heard it read here on the 17th that it was finally ratified.

(Testimony of William P. Kelly.)

I had something to do with the adjustment of wages following the award. When it was finally decided by the Union representatives to consider this change in wage, I met a group that had already been talking to Mr. D. N. Edwards of Oakland, of the Wood Products, and they told me that he had accepted the proposition, and then we met Mr. Pierce of the Redwood Manufacturing Company of Pittsburg at the Hotel Oakland and accepted it; then we drove down to Santa Clara and picked up the business agent there in front of the Pacific Manufacturing Company plant and went in and talked to Mr. Pierce, the manager of that plant, and he agreed to go along in that program. [623]

Redwood Manufacturing and Pacific Manufacturing Companies both brought their wages up to meet the \$8.50, and the local unions in San Francisco agreed to drop from the \$9.00 award to the \$8.50 in order to make the wages uniform in the six counties. At that time some of the mill owners had paid the \$9.00 wage. The adjustment was principally on the old work that was on hand at the time that the award was handed down. The \$9.00 wage was in effect from the time of the award until, I believe it was, October 17th.

The new and old work entered into the agreement. At the time we entered into the 1938 contract, as it was finally agreed upon, I would say we did not have contracts with all of the cabinet shops in the Bay Area. By no means did Mr. Ennes rep-

(Testimony of William P. Kelly.)

resent all the cabinet shops in the Bay Area at that time. We obtained separate agreements from many of the cabinet shops who were not represented by Mr. Ennes.

"Q. Yes. Have you those contracts?

"A. I have no doubt that they are on file in the Local Unions, or in the District Council.

"Mr. Carson, II: They have been brought in for identification but they have not been separated.

"The Court: Well, I think it is immaterial, anyhow; you are wasting time in producing them, gentlemen. If you wish to make a formal offer of them I will make a ruling now.

"Mr. Routzohn: Q. Can you tell us about how many there were that you obtained, contracts from people other than those represented by Mr. Ennes?

"Mr. Burdell: I object, as immaterial and no foundation, and calls for his conclusions.

"The Court: I think he said no.

"The Witness: No, I did not say anything.

"The Court: The objection is sustained. [624]

"Mr. Routzohn: We would like at this time, if your Honor please, to make a proffer of all the contracts that we brought in here at the instance of the Government.

"The Court: Well, produce them; find them and produce them.

"Mr. Routzohn: If I can prevail on the Clerk, here, to do that, your Honor, please.

"The Court: Well, I think you ought to assist

(Testimony of William P. Kelly.)

the Clerk in doing that if you know what they are. Make the offer some other time.

"Mr. Routzohn: All right, sir. We can do that before this witness leaves.

"Q. Is that also true in the 1936 contract, that you obtained contracts from others than those represented by Mr. Ennes?

"A. Yes.

"Mr. Burdell: I ask the answer be stricken and I will also interpose the same objection.

"The Court: The answer may go out. Objection sustained.

"Mr. Routzohn: Q. The same question as to the Mill Owners represented by Mr. Edwards and Mr. Gaetjen, that is, the other Mill Owners, whoever they were; over here on this side of the Bay, did you obtain contracts with other mill owners that were not represented by them?

"Mr. Burdell: The same objection.

"The Court: Sustained.

"Mr. Routzohn: Now, if your Honor please, at some other time we would like to make that offer.

"The Court: Very well."

After adoption of the 1938 award I took on other duties in reference to the old work provided for, that is, taking care of the old work provided for in the agreement. I had nothing to do with the 1938 contract referred to. At no time did I ever enter into a verbal agreement or understanding of [625] any nature with the employer groups or my own

(Testimony of William P. Kelly.)

union men relative to the work that was to be performed on the materials in this area.

There has not been, to my knowledge, at any time, any verbal agreement separate and apart from the agreement we have been talking about here that have been put in writing. There has not been anything transpire that I know of whereby there has been any secret or verbal understanding that the unions were to discriminate against the wood and patterned lumber products of the Northwest, and interfere with them in any manner, shape or form, interfere with Interstate Commerce.

I know of no agreement whatsoever other than the agreements we have been talking about that have been introduced in evidence.

Cross Examination

By Mr. Burdell:

In 1936, other than Messrs. Kelly, Sammet, Ovenberg and O'Leary, my recollection is that Mr. Helbing was on the Negotiating Committee for the Unions. In 1936 Mr. Ennes signed for the entire group as I remember it. There were negotiations leading to the execution of the 1936 contract. Jack Hart, Elmer Anderson and, I believe, Harry Gaetjen, represented the mill owners.

Mr. Ennes was present at those negotiations from the Cabinet Institute. There was no one else present from that group that I remember. I don't recall Mr. Mullen or Mr. Emanuel being present at any of those negotiations. My recollection is Mr.

(Testimony of William P. Kelly.)

Gaetjen was there, I am not sure about Mr. Warden. I have attended so many of these conferences it is almost impossible to place them without something to direct my attention.

The duties of the business agent of Local 42 are, in the [626] first place he goes around and checks the mills to see that the men working in the mills under contract are union men, and that the provisions of the agreement with the employers are being lived up to and they are being paid the proper wages, to appoint stewards in the mills and to do a thousand and one other duties that fall upon the business agent. If sometimes a member dies, he goes out, if he has no friends or relatives, and makes funeral arrangements, sees that the man is properly buried, goes bail, maybe, for someone who is—the speed limit.

One of the chief duties is to enforce the provisions of the Employer-Employee Agreement.

It is a fact that each stamp of the United Brotherhood of Carpenters and Joiners of America has a number on it. That number represents the number of the mill and the district where the stamp is issued. It has an indication showing the geographical district. By looking at the stamp you could tell where the material came from. The business agent does not have occasion to use the expression "Local Stamp" in the line of business. We have no such thing as "Local Label."

The contract provides either party, and that if

(Testimony of William P. Kelly.)

either party desires changes to be made, they shall notify the other group. In 1938 the employer group may have stated in their answer they desired to make changes in the contract, I don't know whether they even answered or not. I don't recall whether or not they received any such notice in 1939, they probably did, although I was not on the Committee in 1939. The contract provides that either party may give notice to the other.

At the present time there is no non-beneficial mill. A non-beneficial mill is one whose laborers are affiliated with the United Brotherhood of Carpenters, but which are not entitled to the use of the Union Label. A mill employing union men not paying a certain wage is not entitled to the label, but the men [627] may, nevertheless, be members of the United Brotherhood of Carpenters and Joiners of America. Their benefits depend on the type of organization. "Non-beneficial" has been done away with and now they are either semi-beneficial or beneficial. Those that are semi-beneficial have the use of the Union Label, the ones that don't have the use of the Union Label is where the conditions in the plant do not come up to recognized standards required in order to get a label. Wages is one of the main standards. Otherwise, the men in such a mill are full-fledged members of the Brotherhood.

I don't believe there is any such mill at the present time in the Northwest. Whether there have been such mills in the past four years in the Northwest I am not qualified to give an opinion.

(Testimony of William P. Kelly.)

The last paragraph of Paragraph 16 in the 1936 negotiations beginning: "Nothing herein shall be interpreted", was brought in at the suggestion of the employers. I believe it was Mr. Ennes who specifically suggested that clause and insisted upon its insertion. My best recollection is that it was Mr. Ennes and wasn't Mr. Hart.

Dowels, the first of the exempted list, are manufactured in any plant that has a dowel machine. They are manufactured in quantities in the San Francisco Bay Area. In San Francisco the Eureka Mill has a dowel machine. That is the one I worked in, I am familiar with that one. I worked there for a long time so I wouldn't be familiar with the machines used in any other plant.

Panel stock is manufactured in the San Francisco Bay Area in small quantities for special orders. Pacific Manufacturing Company in Santa Clara manufactures a quantity of stock panels. A small plant is here in San Francisco that sawed veneer, only a small quantity though. [628]

They can make plenty of pine, redwood and Philippine mahogany doors here. We can make plenty of two-light windows. Panel stock is usually for detail panels, what they call specials. It has a core with the veneer glued on both sides to make a panel, either for a table top or a wall panel, or anything else it might be used for. We could manufacture them all locally. There was a mill in San Francisco that manufactured them.

(Testimony of William P. Kelly.)

Lumber, rough or surfaced, is all bought, wherever the mill owners buy it, from a saw mill or from the broker or whoever it is that sells it to him. It comes in from outside the Bay Area.

Sheathing is a low grade of lumber that may come in surfaced or may be surfaced here.

Flooring is made here in small quantities, not very large.

Siding and clapboard is all manufactured here in quantities.

Shooping is manufactured here. Tongue and groove, also.

Dowels was put on the exempt list because they come in different types, one type is manufactured here. I don't know of any machine in the Bay Area that makes another type, but that particular type is used somewhat by some of the mills for they prefer it to the type that is manufactured here. The part that isn't manufactured here is a small board with a circular ridge running around it to hold the glue. The type we manufacture here has a straight groove rather than a circular groove.

Dowels were put on the exempt list because one particular kind, not manufactured in San Francisco, was preferred for certain purposes. To the best of my knowledge, which is very little, that type comes from the Southeast. [629]

Redirect Examination

When we were negotiating in 1938, when we put in our demands, we asked for wages comparable

(Testimony of William P. Kelly.)

to other building trades crafts and after considerable discussion, the employers requested us to put on paper what we were really asking for, and Defendants' Exhibit S for identification was drawn up in the form of a memorandum and was submitted to the employers as our demands.

Thereupon Defendants' Exhibit S was introduced in evidence and read as follows:

“ ‘Memo. #1

“ ‘1. On and after June 15th, 1938, the minimum wage scale for Journeyman Cabinet Makers, Bench Hands and Millmen employed in the operation of woodworking machinery will be the same as agreed to by the B.C.D.C. of C. for the Carpenters.’

“ ‘May we stipulate that is Bay Counties District Council of Carpenters?’

“ ‘Mr. Burdell: Yes.

“ ‘Mr. Routzohn (reading): “ ‘2. Six hours shall constitute the regular work day between A.M. and P.M. Five days shall constitute a regular working week from Monday to Friday inclusive.

“ ‘3. The rate of wage for all overtime work shall be double time. Work on Saturdays, Sundays and Holidays from 12 midnight of the preceding day shall be paid for at the rate of double time except that Saturdays and Holidays shall be non-work days. Recognized holidays are—New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Admission Day, Armistice Day, Thanksgiving Day and Christmas.

(Testimony of William P. Kelly.)

“4. Shift work to be same as Carpenters.

“5. All foremen and all Superintendents giving orders to the men shall become members of the Union.

“6. Employers or Firm Members, that is, those having direct interest in the business and working with tools of the [630] trade shall become members of the Union, and they must work the regular Union hours.

“7. An Apprentice shall be not less than eighteen (18) years of age and not over twenty-two (22) years of age when starting his apprenticeship. He shall undergo a course of training for four (4) years.

“The minimum rate of wage shall be:

	Per Hr.	Per Diem (8 hrs.) (8 hr. basis)
First three months	40c	\$3.20
After three months	46 $\frac{1}{4}$ c	\$3.70
After six months	52 $\frac{1}{2}$ c	\$4.20
After twelve months	58 $\frac{3}{4}$ c	\$4.70
After eighteen months	65c	\$5.20
After twenty-four months	71 $\frac{1}{4}$ c	\$5.70
After thirty months	77 $\frac{1}{2}$ c	\$6.20
After thirty-six months	87 $\frac{1}{2}$ c	\$7.00
After forty-two months	\$1.00	\$8.00
After forty-eight months	The Journeymen's rate	

“8. An apprentice, after having served an apprenticeship of 2 (2) months shall become a member of the union. All apprentices must attend a union recognized trade school at least four (4) hours per week.

(Testimony of William P. Kelly.)

"9. The employment of apprentice shall not exceed one (1) apprentice to every five (5) or major fraction thereof of Journeymen Millmen and Cabinet Makers combined at all times. Handicapped workers shall not be included in this computation.

"10. There shall be no limitation of the employer as to whom he shall employ or discharge, excepting that any working foreman, working Superintendent, Journeyman Millman or Cabinet Maker must have a Union Card or a permit card before being employed and apprentices within two (2) months become members of the Millmen's or Carpenter's Union. [631]

"11. Millwright work, consisting of installing of additional equipment and the maintenance of equipment, may be done at the convenience of the employer. The rate of wage for such work shall be the regular rate of wage of employees when employed on production, except that the rate of wage shall be the straight time rate without regard to the period or length of time employed on such millwright work or the day. This does not include grinding, changing knives, saw filing or setting up machines.

"12. Exempt list to be eliminated.

"13. When any Cabinet Maker, Bench Hand or Millman performs any work at the building site, the minimum scale of wages and other conditions shall conform to the Carpenters' scale as set up by

(Testimony of William P. Kelly.)

the United Brotherhood of Carpenters and Joiners of America. Under any circumstances, the minimum scale paid for such outside work shall not be less than the minimum shop scale. Traveling time and expenses to be provided by Employers, as per D.C. of Carpenters By-Laws.

"14. The work in progress and work for which contracts have been signed prior to June 15, 1938, shall be completed at the wage rates existing in plants at the time. This work is to be certified by a Committee having one (1) representative each for the respective Employers Association and Employees. This Committee is hereby authorized when they deem it advisable, and where agreeable to the specific shop to determine a date on which the new rate is to become effective, or to determine the number of man hours that may be employed under the old rate before the new rate becomes effective. Lists of uncompleted contracts to be filed on or before June 20, 1938.

"15. Business Agents of the Millmen's Union shall have free access to all shops during working hours at their own risk.

"Business Agent to have access to see pay-roll and time cards on request." [632]

Cross-Examination

(resumed)

By Mr. Burdell:

I am familiar with section 2 in the 1938 contract.

(Testimony of William P. Kelly.)

Section 8 of the Arbitration Award was incorporated in the 1938 contract as section 2. The reason for the adoption of section 2 as part of the agreement was that when the Award was handed down, that is, the Arbitration Agreement, it provided that the Award would incorporate such clauses as were already agreed to by the Conference Committee of the Negotiating Committee, and that the entire document would constitute the Award and the Agreement. The purpose of including section 8, which is this same section in the Arbitration Award, was that the situation confronting us in Oakland—the \$8-wage over there and the \$9-wage over here—would cause much confusion and give the employers on the Oakland side, who had been on all of the negotiations and had agreed to that part of the agreement that was in existence up until the time of the Award, would give them such a big edge over San Francisco that it was necessary to do something about it, and for some statement in the award that would cover the situation. It was to force the Oakland side to abide by the Award, due to the fact that Oakland employees were part of the Arbitration Agreement. It would cause the Oakland group represented by Mr. Edwards to abide by the Award. That was the main reason we had in our minds at the time. The \$9 applied in the entire district, so naturally it was the employers who were more concerned than we were. I would say the employers desired to have

(Testimony of William P. Kelly.)

it in, meaning the employers who were on the Arbitration Committee. Mr. Hart and Mr. Anderson were representing their group. Then it was incorporated in the contract. After the Arbitration Award there were not negotiations, because when the Award was handed down we executed according to the Arbitration Agreement, but there were some meetings to get it in final form. That was more or less of an office procedure—it [633] was not negotiations or anything like that. It was merely a matter of getting the thing together in proper form. I could not say who represented the employers for that purpose. Carl Warden and Jack Hart signed the contract for Lumber Products Association. I would say both took part in the meetings to draw up the final contract. J. G. Ennes represented Cabinet Manufacturers. East Bay Mill Owners Association was not a party—they would not accept it. In the negotiations before the arbitration, I believe Carl Warden and Jack Hart represented Lumber Products Association. J. G. Ennes represented Cabinet Manufacturers—it was not a suggestion, it was an order that section 2 of the contract be taken out of it. It was the order of General President William L. Hutcheson, of the United Brotherhood of Carpenters and Joiners of America. We had a meeting at the office of the Employers in the Call Building one morning, at which time Mr. Hutcheson was present, at the invitation of the Employers, and

(Testimony of William P. Kelly.)

when he read that particular article he said it would have to go out. To the best of my recollection there were present Messrs. Ennes, Hart, Hutcheson, Cambiano, Ryan and myself. There might have been one or two more—I think Harry Gaetjen was there. To the best of my recollection, Messrs. Ennes, Hart and Gaetjen represented the Cabinet Manufacturers and Mill Owners. There was opposition from the Employers to Mr. Hutcheson's order. They opposed the taking out of that section. The only instance I can remember is that Ennes took the contract that had been amended and threw it on the ground, and made some statement that he thought that the Unions agreed and they amended it, or some such words as that. Mr. Hart and Mr. Gaetjen probably said something, but that is the high light that stands out in my mind. My recollection is they were opposed to it as was Mr. Ennes. The meeting took place in the early part of October, 1938, in the office of the Employers in the Call Building. Some time between the first and fifteenth [634] of October. It is right that in the spring of 1936 the Unions notified the Employers of their desire to negotiate a new contract and the Unions at that time had certain demands which they desired to incorporate in the new contract. Better wages and shorter hours were the principal demands. There were others. We also wanted an all-out-and-out Union clause in there. I do not recall the amount of the increase

(Testimony of William P. Kelly.)

the Unions were seeking. It may have been a definite amount—I would have to see the letter. I don't remember whether we stated a specific amount or not. They will be in our minutes of Local 42. I would have to see the letter to be sure about 1938. The Exhibit introduced is not a memorandum covering the demands in 1938. This was written later at the instance of the Employers for us to put definitely on paper what we were asking for. That is not the original demands in 1938. In 1938, we were asking for the same wages that the carpenters were getting. The wages of the carpenters were fixed originally, so we were asking for a definite increase. The amount was not stated in dollars and cents—it was a definite objective. I do not remember whether or not that was a fact in 1936. The chief subject of discussion at the negotiations in 1936 was the demands for wage increase and better hours and also our desire for a straight Union Shop clause in there was one of the main subjects of arbitration. The Employer representatives always oppose our demands for higher wages. All representatives of each association opposed them in 1936—Messrs. Ennes, Edwards and Hart. They opposed them at length. They advanced arguments in support of their opposition to these demands. They had one argument all the time—that is, the meeting of competition. They claimed that they could not meet competition if they paid us any more money—that

(Testimony of William P. Kelly.)

the business will fly away and we will be out of work. That is their theme song continuously. That is in the negotiations we are having right now, the same thing—they cannot meet the [635] competition of the lower scale of their competitors in other parts of the country who are paying lower wages. It may have been part of my testimony that the exemptions in paragraph 16 were included at the request of the Employers because they could not be made in quantities in the San Francisco Bay Area. The main reason that they wanted that stuff in all of the time is because they could get it some place else cheaper and bring it in and have us handle it—that is the main reason. The Employer representatives never agree on what items should and what items should not be on the exempt list. Any particular plant or owner, or one way or the other, association, whatever it may be, it always wants to bring in the thing that he does not manufacture. If he does not manufacture it then he wants it on the exempt list. If he does manufacture it he wants it kept out. One of the reasons for the introductory portion of section 17 was that the Unions objected to taking down union material and doing certain work on it and then putting the label on it. Some millwork items are molding, frames, sash, case work, that is kitchen cabinets, medicine cabinets, doors and anything that goes into a building. Windows are sash. It is a matter of technical distinction between windows and sash

(Testimony of William P. Kelly.)

that one of them has panes and lifts up and the other one pushes out. It is not completed in a window until it is built and in the building. After they get through the sash department they are all the same, when they are being manufactured. If finished molding came into a planing mill, a mold on a window frame, that would go into the framing department and would be trimmed and built to the window frame, trimmed and cut to length. Finished molding that goes on a ceiling or a wall would be delivered to the contractor just as it comes, and no work would be done on that. The complete window frame is fabricated in the frame department of the planing mill. The frames are put together into a window, the various items which go into it, the [636] sills, casing, and one thing and another trimmed and nailed together. Door jambs, I think, practically always come in trimmed. There is no work to be done on them. They come in all bound up. There is nothing to be done on dowels. There are a few cabinets come in. They come in in parts and are assembled here, and having some panels, and not even that is trimmed. You can take, for instance, partly run lumber, that is, surfaced lumber, and fabricate it into a cabinet. Sometimes there is a lot of things done on doors. If it is a one-panel door, they come with one, two, three or any number of rails or panels on the door without changing the original door. They can take a one-panel, two- or three-

(Testimony of William P. Kelly.)

panel door and put a molding around it and make a molded door. For the ordinary door that goes in the home, the doors are used as they come in. Except in special cases, nothing is done with the exception of front doors which are practically all made in this area. Front doors are not on the exempt list. I testified that one of our objections was to taking non-union material and doing certain work on it and then being required to put the label on it. That was the particular objective of paragraph 16. That is what they finally got down to. Our objective at the time was to get a complete union label clause in the agreement and they would not go for it. We did not want to handle any of the stuff but finally we agreed to that particular section. The exemptions were put in at the request of the Employers. As far as exemptions were concerned we would work on them regardless of whether or not they had a Brotherhood stamp. Dowels did not have a stamp on them—they are too small. It is the duty of the men who run the mill of a union plant to see that the stamp goes on molding. Plywood very seldom has a stamp on it, even when manufactured by a mill that is entitled to use the stamp. The reason is that most of the plywood is two-sided—it can be used on either side and they do not want the face marred with any stamp [637] of any kind. The item of lumber shipped into the San Francisco Bay Area in greatest quantity is rough lumber. There is a

(Testimony of William P. Kelly.)

certain type of surfaced lumber surfaced two sides in the mill that is regarded as rough lumber. In other words, they call it shop lumber. It was possible in San Francisco in 1936, to obtain rough and surfaced lumber with the label on it. Rough lumber or shop lumber does not require a label at any time, because it would be quite a job to stamp every piece unless it was done by machine. Lumber surfaced two sides, or shop lumber, does not have a stamp. Lumber surfaced four sides, if it goes through a Union mill, should have the label on it. That is, it is entitled to the stamp. Sometimes the men in the plant are careless. It is as to dowels and lumber, rough and surfaced two sides, you cannot tell whether it was made in a Union shop by looking at it, because it does not bear a stamp. I testified that at the negotiations in 1936, there was some discussion about competition from mills paying a lower wage scale. It is the Employer representatives' argument all the time that they were in competition with these mills. There was a pamphlet put out in 1935 that took care of their stand completely, I believe, and I believe it was submitted by Local Union 42 here. The general theme is they couldn't pay us any more wages due to the effect of competition from mills located in other areas paying lesser wages. Just the flat statement they use all the time. That was the position of the representatives of the Employers who were at those negotiations and included Messrs.

(Testimony of William P. Kelly.)

Hart, Ennes and Edwards. - It is not a fact section 16 was included in this contract to take care of that very situation, that is, to prevent these mills that were located in other areas and pay lower wage scales, from shipping their material into the San Francisco Bay Area regardless of the union label. We were not agreeing to prevent anything. The only thing we did not want to do was to handle [638] anything that did not bear the union label. We had no interest in preventing the shipment into this area of anything that had the union label, or any other kind. We are not in the business of preventing anything. Our position is, we want to handle stuff with the union label. It has been our position all the time. We have no objection whatsoever to handling anything or to working on anything or to having anything shipped into this area, as long as it has the union label. That is the position of the United Brotherhood of Carpenters and Joiners and we have taken no other position. It has been the position as long as I have been in the United Brotherhood—since 1908. I was a member of Local 42 in November 1940, and attended meetings of the union during that period. I probably attended the meeting on November 12, 1940.

Thereupon, the following testimony was produced as impeachment of the witness and the jury was instructed that it applies only to the witness.

I never said at the meeting of November 12, 1940, or at any time, "Six shops in Los Angeles

(Testimony of William P. Kelly.)

signed up for \$8 per day and Webber will have to be kept out of this district, label or no label, if the brothers want a check on pay day." I was apparently present at the meeting of January 23, 1940. I think I get the idea of this, as I remember it, I might state I do not express myself in the manner in which this is written. It says here: "Brother Kelly stated there is no exempt list and the mills are breaking down conditions by bringing in this material with the label that is being manufactured under a lower wage scale. The conference committee should tell the employer at the coming meetings that they are the one who is guilty of breaking down conditions by having this cheap labeled material shipped into this area." I may have made a statement concerning the employers in January 1940. I will say definitely that record is incorrect. I may have said something about that the rates are down, but something that did not convey the thing that— [639] Well, as I gathered from this, the employers had apparently been complaining of certain conditions. There is something down here about four sides stock coming in without a label. If I could just get some idea out of this as to what started the discussion. Now if there was any argument at all, as I can see it, I was stating that the mill owners themselves who were complaining to us were bringing in this material and then blaming it on to us.

I was President of Union 42 for some time. I attended meetings substantially regularly from

(Testimony of William P. Kelly.)

1936 until the present time. It is the practice of the union at each meeting that the minutes of the previous meetings are read and approved. It is correct that on January 30, 1940, the minutes of January 23 were read and approved. The fact they were read and approved at that meeting does not mean I was there and heard them read, and approved them myself. You understand, we have quite a bit of work to do, those who take an active part in the organization, and sometimes it is at the middle of the meeting before we get in. I may not have been at the meeting when those minutes were read, because they are read at the beginning of the meeting. The minutes of the November 19 meeting indicate the minutes of the special meeting, November 12, were read and approved as read. My testimony is that I did not say Webber would have to be kept out of this district, label or no label. Webber Company is located in Los Angeles, that is, their plant. I think possibly it is a year ago or maybe a little more when Webber was permitted to use the union label. I am quite familiar with the Webber situation from certain aspects. I am not sure, it was about a year ago they were permitted to use the union label. It was held up for quite a while and no agreement was signed due to the fact, I believe, the painters' end of it hadn't been signed up and so they didn't get the label until the entire group had been signed up complete. Naturally, there was a good deal of [640] discussion about it in November or December, 1940.

(Testimony of William P. Kelly.)

The Webber people were strictly non-union and on the unfair list for a long time, and naturally would be a subject for discussion. There was possibly a discussion about them being able to get, or getting the stamp or label in 1940, and it was possibly shortly after that they did get the stamp. I would say they used the stamp and had the stamp, but I could not definitely tell the date. I don't know when that agreement was finally completed. It was about a year ago so far as we were concerned. They had signed an agreement but the agreement was not completed due to the painters, as I remember.

Thereupon, the Court instructed the jury that the questions asked were known as impeaching questions for the purpose of impeaching or contradicting his testimony, and were to be considered by the jury as affecting only the credibility of the witness who made the statements.

I testified that the 1917 contract was used as a basis for section 16 of the 1936 contract. I went in the army on November 1, 1917. I am not familiar with the negotiations surrounding the 1917 agreement. I had nothing to do with it. I would not know a thing about the purpose of the provisions in the 1917 contract, from personal knowledge. When we were discussing in 1936 a straight union clause in the agreement, the employers brought to our attention that before 1921, when we did have contracts, we used to have articles that

(Testimony of William P. Kelly.)

could be used without the union label. They gave that as a reason why we should do it again. As I remember it, they were using various old contracts for a basis to work from. As I explained before, we were looking for a straight union clause contract and they were using section 1, article 2, of the 1917 contract. We were not interested in it—we didn't want it—but they insisted on their viewpoint, and finally worded it in such a way that would overcome some of our [641] objections, that is, bringing stuff in that was partly fabricated and so on, which we finally did accept. The difference in the wording of the contracts, it applies to different people. The Building Trades Council at that time made the agreements for the millmen and it was the Building Trades Council that agreed that their men out in the field would not handle that, whereas we were only agreeing with the mill owners that we wouldn't handle it. It is right that it says that we won't handle anything manufactured by a mill working contrary to the prescribed number of hours, and they won't work on anything manufactured by mills paying less than the wage scale here in San Francisco. That is the 1917 contract. Then it says we won't work on anything manufactured by mills employing other than union mechanics. That means they won't work on anything that is manufactured by a non-union shop. The 1936 contract says, "In the interest of standardization of rates of wages and working condi-

(Testimony of William P. Kelly.)

tions." "It is agreed that no material will be purchased from and no work will be done on any material or article that has had any operation performed upon same by saw mills, mills, or cabinet shops, or their distributors, who do not conform to the rates of wages and working conditions of this agreement." The provision in the 1917 contract relating to non-union mechanics and the provision in the 1936 contract, "or their distributors who do not conform to the rate of wage or working conditions of this agreement," mean the same thing. It is in there definitely, "that do not conform to the rate of wage and working conditions of this agreement." It is the same thing in different words. Naturally, a non-union mechanic or a non-union shop would not conform to working conditions of this agreement. It would be true in a literal sense that a union shop would not in any event conform to the working conditions or wage scales of the 1936 contract, but insofar as the United Brotherhood of Carpenters and Joiners and the use of [642] the union stamp, it would not be true. There are union shops that have a right to bear the union label that do not pay the same wage rates that are paid here in San Francisco. Each stamp bears a number. That is a representation indicating the district in which it was manufactured. Around here, the district would be the Bay Counties District of California. It is right that I testified I didn't ever have occasion to use the

(Testimony of William P. Kelly.)

term, "local stamp," because there is no local stamp. To use the expression, "local stamp," would be using the term in a loose manner, because he would be talking about something that was non-existent. I don't know what he would mean if he used it in a loose manner. There is no such thing. It should not be used in connection with the business of the union. It is non-existent—I don't see how it could. If it were used it would be a mistake.

According to the minutes, I was present at the meeting of Local 42, dated April 19, 1938. I presided at that meeting. According to the minutes, I was present in the chair during the entire meeting. There appears in the minutes, "Discussion arose on Wheeler-Osgood doors being molded and stamped with Local Stamp No. 6." That apparently meant that the Bay Counties District Stamp No. 6—if it had been stated properly—that is just the very thing that we were kicking about at that time. As I stated here a number of times, we were kicking about this very item of bringing in non-union doors, putting a mold on them, one way or another, and then having a stamp put on them—that is the very thing. The term, "Local Stamp No. 6" is used here.

"Q. Would you say that it had never been used at any time, properly or improperly, by a union man?

(Testimony of William P. Kelly.)

"A. Well, it would if used in the same manner as it was there."

The expression "local stamp" could be used there improperly and apparently has been used. It is written down there. I testified we had no agreement with regard to the shipment or use into this area of [643] millwork. Section 30 of the 1938 contract is the agreement in so far as the use of the stamp is concerned. There is another clause added to that at the instance of the Employer that has nothing to do with the clause. "The recall of this label shall be prima facie evidence of the cancellation of this agreement with respect to the shop from which the label is withdrawn." Section 30 means that the label is the property of the United Brotherhood and shall remain the property and may be recalled at any time it is being used at a disadvantage of the organization. That is not a promise to the employers to enforce the stamp. It is my testimony that at no time have I ever been interested in preventing union-label-bearing material from being shipped into this area, whether that material was manufactured at a lower wage scale or not, if it bore the label.

I was present at the meeting of November 19, 1940. The minutes read, "Brother Kelly asked Brother Ricketts to support the new paragraph the millmen are going to try to add to the Brotherhood constitution and laws. The shipping of low wage material into a district where higher wages

(Testimony of William P. Kelly.)

are being paid. Brother Ricketts stated he will help the millmen any time," and gave his address, and that was the New Lakeland Hotel, in Florida. The convention was held in Florida, and we were interested in strengthening the use of the label and in some respects this low wage material. We want to get the standard of wages higher in order to gain the use of the label. At the present time the level is at 75 cents, but we wanted the level raised, and when the secretary used the word "shipping," we are not interested in the shipping in any manner, shape or form. We were interested in getting the level of the wages before a shop would be entitled to the label. There might have been a few small shops in the Bay Area in 1940 that were not paying the wage level provided for in the 1939 contract. It is right there were very few. [644]

Cross-Examination

By Mr. Faulkner:

In 1936, when paragraph 16 was prepared, one of the first demands of the unions was that they would not work on anything that did not bear a union label. One of our main demands outside of wages and hours was the use of the stamp. There was never a time when we did not demand the use of the stamp. It is a fact there had been a long period of time when the unions did not have a closed shop agreement. We had individual agreements; part agreements that did not amount to much.

(Testimony of William P. Kelly.)

I would say that the first closed-shop agreement of any account was in 1935. In 1936, we were getting a little further along in our closed-shop efforts here. After the request or demand that we would not work on any non-labeled goods, the Employers refused it. It is a fact that our negotiations were not getting any place and we almost abandoned them and went on strike. Mr. Hart told us in substance at the time that the 1917 agreement arose in this transaction, we were demanding more than when we had the town in the palm of our hand in 1917. That is when the Employers brought out the 1917 agreement showing we were making greater demands in 1936 than we had in 1917. That is how we started discussing a medium and came to an agreement on that subject. They finally got so far along they presented that clause and we finally accepted it—it shows on its face. The clause we accepted was the first paragraph, the exempt list in the paragraph relating to the things on this list. I read that paragraph through.

At the meeting in 1938, at which some international officers were present, my recollection is Mr. Ennes threw the contract on the floor. He very clearly indicated that if any union man did not think it was binding on them, he did not care whether the contract existed or not. I have testified that the [645] main purpose of paragraph 8 of the Arbitration Award incorporated in para-

(Testimony of William P. Kelly.)

graph 2 of the 1938 agreement was to cover this \$8 day and \$9 day business. In October, 1938, when we amended that agreement, it ceased to be the subject of discussion, because the General President ruled it out. It is correct, I testified that the Employers wanted it in. I don't think there was any reason different from the original reason. At the time the General President was here there was a strike in Oakland and if my memory is correct, both of those were at the same time, the strike in Oakland and the meeting. All of the facts relating to both the 1938 contract and the amendment are closely related, not only as to point of time but in the actual happening. It is not correct that the wage scale, set forth in the 1938 agreement as originally written, was only paid for one day or one week—some of them paid it right from the first day it was effective. The cabinet men paid for the entire time, but there was a setup whereby a separate check was signed by the employee which he was given credit for by the local union against his assessment. There was an assessment of \$50 placed against each member of the local union in order to pay the difference in the old and new work. The contract called for the wage to start from the effective date. The unions in 1938 were attempting to unionize every place that applied to millmen. In addition to the men represented by Mr. Hart of the Lumber Products Association and Mr. Ennes for the Cabinet Insti-

(Testimony of William P. Kelly.)

tute, we signed a great many other shops to union agreements. The agreements are identical with the agreements with the associations with, I believe, a little additional paragraph at the beginning.

"Q. I show you here some exhibits that have been produced, I am not going to introduce the exhibits, your Honor, but I would ask Mr. Kelly if he would indicate the firms that were unionized in 1938, with contracts identical with the ones here in evidence. [646] The firms are on the top of each one of these.

"Mr. Burdell: Do you mind if I look at them a minute?

"Mr. Faulkner: No.

"A. Atlas Stair-building Company, that was one signed August 15, 1938.

"Q. Signed what date? -

"A. August 15, 1938.

"Mr. Burdell: Do you have a list of those?

"Mr. Faulkner: They have been in and out of our possession, but they came in here at the trial.

"The Court: Why don't you make a list of them and you can save time.

"Mr. Faulkner: Suppose I read them off. There are really not very many.

"The Court: Very well, read off the names.

"Mr. Burdell: I am going to object to it, because I do not see any materiality, and I do not see any foundation laid.

"Mr. Faulkner: These came out of the Union's

(Testimony of William P. Kelly.)

possession. They are original contracts, aren't they, Mr. Kelly?

"Mr. Burdell: I take it these will show these companies were unionized in 1938, but is there anything to show they were not unionized before?

"Mr. Faulkner: They may have had a contract before.

"Mr. Routzohn: Some of them did not get in until 1940.

"The Court: I cannot see that they are material. I asked you before to make a list of them and you can make your offer and I will rule upon it.

"Mr. Faulkner: I will read the names off, it will only take a short time. * * *

Thereupon, the names of some forty firms with 1938 contracts were read.

"The Court: Are any of those firms whose names you have read corporations, partnerships, or individuals, defendants [647] in this case now on trial?

"Mr. Burdell: One is, your Honor, possibly two that I know of. The Brannan Street Planing Mill and Eureka Sash, Door & Molding Company.

"The Witness: That is a different Eureka mill.

"The Court: Those are separate contracts made by the unions with persons who are in no way involved in the trial now before the Court?

"Mr. Faulkner: Yes, except that they signed the identical contract.

"The Court: Yes.

(Testimony of William P. Kelly.)

"Mr. Faulkner: And the testimony is offered for the purpose of showing that at the time, in conformity with the position taken by the respective sides, that paragraph 8 of the Arbitration Award, paragraph 2, of the Agreement, was to provide a condition of unionization of plants in this area. In other words, there was an attempt to unionize, and the only distinction between the contracts they ultimately entered into and the contract actually entered into, I would like to read into the record, it is only a line.

"The Court: Read it.

"Mr. Faulkner: 'Agreement for the purpose of promoting the mutual interest of the parties signatory hereto between (blank),' that is, between the various people whose names I have read 'and the Bay Counties District Council of Carpenters as follows:

" 'The wages, hours and working conditions of the Cabinet Makers, Carpenters and Millmen employed by the' different firms by whom the agreement was signed—'will be as stipulated in the agreements between the District Council of Carpenters, Millmen's Unions No. 42 and 550 and the Lumber Products Association, Inc. and the Cabinet Manufacturers Institute, Inc., Northern Division, [648]

" 'which is as follows'—

and then the Exhibit 132—

"The Court: Are you going to read any more of that?

(Testimony of William P. Kelly.)

"Mr. Faulkner: No. In other words, Exhibit 132 is mimeographed and became a part of every agreement with these people.

"Mr. Burdell: I desire to move to strike every thing that Mr. Faulkner has read, because it does not prove what he wants to prove, it is immaterial.

"The Court: I think it is immaterial, it may go out. Do I understand you are going to offer these in evidence?

"Mr. Faulkner: No, I have completed my proof, I think it is relevant in this case. The Government says that paragraph operated to provide for a certain situation; and here are constant attempts to unionize other people. The position we have taken is that that paragraph had to do with the local condition where competitors of these people would be paying a different rate, and as long as that competition existed it is evidence by itself that these people were not unionized. I think it is within the issues of the case.

"The Court: Have you any motion that you wish to make?

"Mr. Burdell: Yes, I move to strike the whole thing on the ground it is immaterial, irrelevant, and incompetent, and no foundation laid, assuming facts in evidence and not within the issues of this case.

"The Court: The motion is granted."

"Mr. Howard: Could I say one thing? These

(Testimony of William P. Kelly.)

pleas in abatement which your Honor is considering, I was wondering if your Honor could indicate when there might be a ruling, so that we may consider the question of presentation of the witnesses.

"The Court: I can rule now, if you wish.

"Mr. Howard: Has your Honor passed on it? [649]

"The Court: No, I have not passed on it, but I am ready to rule. It seems to me that this motion is identical with the one I passed on some time ago, and I am ready to rule now, if you wish to have me do it. I will state in that regard that my thought is that this motion that you are now making is the identical question upon which I have heretofore ruled. If it becomes necessary for me to rule on this motion that you have lately made, if you think you would like to have me do it for the sake of the record now, I am willing to do it. My thought in that regard is that it might be proper in the event there was a conviction in this case of those defendants whom you represent, it might be proper to raise the question upon a motion for a new trial, or upon a motion in arrest of judgment, or something of that kind. If it is going to delay the trial in any way I will make a ruling.

"Mr. Howard: I would not say it would delay the trial by lack of a ruling.

"The Court: I have not had an opportunity

(Testimony of William P. Kelly.)

to read all of the record, I have read some of the evidence taken before the Grand Jury, because I indicated to you that I would do it, but as far as I have gone I feel I have already ruled upon the motion.

"Mr. Routzohn: We would like to have your Honor read the Grand Jury evidence.

"The Court: Yes. If you can wait until tomorrow morning I may have an opportunity to read it this evening.

"Mr. Howard: If we could have a stipulation from the Government, that there won't be any effect on the proceeding by the presentation of witnesses—

"The Court: I suppose, Mr. Clark, you will stipulate to that?

"Mr. Clark: Yes. I told Mr. Howard we would do that, if he put them on the stand it will have no effect on his position. [650]

"Mr. Howard: It will have no effect on his position in the case relative to the plea?

"Mr. Clark: That is correct.

"The Court: Then you are not in a hurry for a ruling, in view of that stipulation?

"Mr. Routzohn: Tomorrow will be satisfactory, your Honor.

"The Court: All right, I will finish the reading of the testimony tonight."

"Mr. Faulkner: Your Honor, at the time of the noon recess, Mr. Burdell had made an objection

(Testimony of William P. Kelly.)

which your Honor sustained. In connection with that objection, one of the grounds stated was that a proper foundation had not been laid in identifying these papers. I don't want to pursue the matter any further in the light of the Court's ruling, but that would be a sound objection—in other words, I had not completed the identification of the documents. If Mr. Burdell will withdraw that and the record will clearly show your Honor's ruling was based on the materiality, I won't have to devote any more time to it. I think that was your Honor's position, was it not?

"The Court: Yes.

"Mr. Faulkner: Will you withdraw that ground of your objection?

"Mr. Burdell: Well, my objection is based on the fact it is not material and also that no foundation as to materiality has been laid.

"Mr. Faulkner: Well, you did not mean that was not any foundation that these were original agreements that were entered into on the day they bore date?

"Mr. Burdell: No, that is not part of my objection.

"Mr. Faulkner: I think that clears it up.

"The Court: Yes." [651]

I have been president many times of Millmen's Union 42. I have worked with the tools of the trade. When we say Millmen's Union, we mean cabinet makers and all. I would say the millmen

(Testimony of William P. Kelly.)

do not install material that comes in here from the outside. Some of them do, however, install material that is produced in a particular shop. The carpenters as a rule make the installation of the material that was not produced in a particular shop. The agreement we had been talking about is not an agreement with the carpenters.

EMIL H. OVENBERG

called as a witness in behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Howard:

I am a member of Millmen's Union 550, employed at the present time by Eureka Sash and Door factory mill, San Francisco. I have been engaged in that type of work over 30 years, taking in my apprenticeship. I have belonged to Local 550 for 30 years. I have spent all that time in this locality working with two or three mills. I am starting on my twenty-first year with Eureka Mill. When I became a member of Local 550, I took the oath that has been prescribed here. I was an active member in 1935. In 1935, you might say that we hadn't recovered from the depression and I can took back over my membership in 550 when our membership had dropped

(Testimony of Emil H. Ovenberg.)

down to a very small amount—just a few faithful members who stayed in the organization. I could give a fair estimate. I would say it wasn't over 120 members in 1935. We have about 600 members now in good standing. In 1935 I would say the wage scale was \$5.60. In previous years it had been higher. It had dropped very much in the years preceding 1935. In 1935, our Local Union determined upon what is called a trade movement. In 1935, we determined to negotiate with our employers. We [652] started a movement to organize and also make demands on the bosses. We didn't meet them as a group. We started our movement and we met some of the mill owners and we met a lot of them individually and made demands on them. Prior to our negotiations in 1935, we did not have a union contract with employers. I can say, of course, in 1935 and all during the depression some were much fairer than others and would employ more men and pay a better scale, but we had no union scale.

In connection with our negotiations, I was named to act for our local. We had a meeting and a committee of three was appointed from 550. As my recollection goes, Brother O'Leary, Thomas Bennett and myself were the members. I went around myself individually with the business agent and met some of the mill owners, but we did meet Nathan Edwards, a mill owner, and Mr. Gurken, then manager of the National Mill in Oakland, at

(Testimony of Emil H. Ovenberg.)

the Oakland Hotel. The employers were not represented by an association. They were individual mill owners meeting with our committee, purporting only to represent themselves. There were certain union demands made by us. Even in 1935, we wanted a closed shop and we asked for a wage scale of 80 cents for the sash and doors and 90 cents for the mill. Those demands were not acceded to. Our men went out on strike. We called the men out on strike. They were on the street for ten or twelve days, and I will use the word "compromise"—an offer was made of 70 and 80 cents, with a vote of the union. We accepted the 70 and 80 and the men went back to work. There was also a strike in San Francisco at that time.

My answer would be "No," we didn't have a similar written agreement in Oakland to Exhibit N, dated June 27, 1935. In 1935 was our first feeble attempt in organizing and fighting the bosses, and 42 and 550 while acting jointly, we were still far apart. The other side of the Bay signed up for 80 cents and practically broke down the 90-cent demand, and so as to get it [653] uniform 42 voted for the same agreement. There was practically the same agreement signed on the other side, but the wording was a little different. We hadn't got together as an organized group on both sides. That is the best of my ability to explain it, but so far as the agreement on hours and wages and working conditions and demands on the bosses, they were identical.

(Testimony of Emil H. Ovènberg.)

In 1936, the committee on negotiations was just two from 550, Brother O'Leary and myself. Negotiations were instituted in the year 1936 with our employers. It seems to me it was the early part of the year. Most of our negotiations for the 1936 agreement spread over a period of from 6 to 8 or 9 weeks, so I would say that was probably in May. Those negotiations involved Local 42. We were jointly together—same demands. They involved mill owners and cabinet makers on both sides of the Bay. We met jointly in negotiating. The union demands were for shorter hours, more wages, a one hundred per cent closed union shop. Those demands were not acceded to by the employers.

In 1936, there came that exemption list and also the famous paragraph 16, I think it is, and we couldn't agree on our wages, and that went to arbitration, and the Arbitration Board was set up but did not go because the proposal was made for settling. After an arbitrator was selected, there was a meeting of minds between the employers and employees. The closed shop has always been our policy, that we were strong in fighting the bosses for a hundred per cent closed shop. I think it was Jack Hart, who was sitting in as a representative at the time, came up with an old agreement. I think it was 1917, or something like that. That was before my time, but that was the time of the agreement, and they came up cold and waved it in our faces and said that

(Testimony of Emil H. Ovenberg.)

in our palmiest days in the earlier years we did not have a hundred per cent union condition and we were demanding more at this present year than had been [654] acceded to in those days, so they wanted the exempt list, and that paragraph then went in and the unions acceded to it. I will use the word again: a compromise on what we wanted, one hundred per cent, and their unwillingness to accept that. One hundred per cent union or working conditions is that we will not work on any material unless it is 100 per cent manufactured any place under the same hours and working conditions that would prevail in this vicinity.

I didn't contribute any of the actual draftsmanship of the language of paragraph 16 and paragraph 17 of what is plaintiff's Exhibit 131—the 1936 agreement. As a negotiator I was simply a millman and working in the mill during the day. I worked at my trade all day and stayed at these meetings until twelve or one o'clock at night. We were negotiating at night in the 1936 agreement. We didn't negotiate that during the day. I did not personally contribute anything to the language of this paragraph. During the negotiations there were plenty of complaints concerning operations that had occurred under the previous agreement of Local 42 and its Employers.

In our demands on the bosses and in fighting them in 1936, there was quite a little conflict there, quite a few of the mills around the Bay Area were still organized and we had an agreement where they were supposed to be 100 per cent union, yet

(Testimony of Emil H. Ovenberg.)

in some shops engaged in the construction of a window frame, perhaps there would come in a lot of casing that would come in and be fabricated in the framing department, and the union stamp would go on it, and it was not 100 per cent union product. In other words, the bosses were taking advantage. Redwood Manufacturing Company in Contra Costa County was not a union organization at that time. When we commenced negotiations in 1936, Pacific Manufacturing Company of Santa Clara was not. There were other non-union shops around the bay. Some of them [655] were in existence in 1936. The 1936 agreement was the most progressive negotiations, and we were sinking down at the time. We made a great deal of progress in 1936. There might have been a few, but we got a pretty good hold in our fight with the bosses in 1936, as far as the unionization of the mills in this Bay Area was concerned.

There was a conflict up north between the C.I.O. and A. F. of L., which commenced in the early part of 1937. That gave rise to a new situation in the Northwest. The C.I.O. were going up there and trying to organize the men, and we had gone through the depression. They were making inroads, and the General Office sent organizers up there and the men were put into semi-official organizations, at a very reasonable initiation, and that was the reason of the semi-beneficial members. Also, at the same time, they brought a lot of ma-

(Testimony of Emil H. Ovenberg.)

terial down into this district, which we fought and kept out. This development in 1937 did not exist at the time of these negotiations. It was not foreseen by anyone at that time. There was plenty of dispute, plenty of controversy, over the exempt list, but as I said before, on the insistence of the bosses and Mr. Ennes, for his Cabinet Manufacturers, who wanted this material, emphatically said he would be interfered with, and that exempt list went in as a concession, as I say, from us, that we were always, and have always been, and it has been our policy and the policy of the General Brotherhood, and also of the District Council, and of the Millmen's Union, to further the use of the stamp and closed shop, 100 per cent.

"Q. Now, the 1936 agreement, then, resulted in an increase in the wage scale, did it not, to the employees? A. It did, yes.

"Q. What was the movement of living conditions at the same time?

"Mr. Howland: I object to that, if your Honor please, on the ground it is irrelevant and immaterial, and having [656] nothing to do with the issues in this case.

"The Court: Sustained.

"Mr. Howard: If your Honor please, if I may have the privilege of this suggestion relative to the indictment, there is a charge here that there was some question of gift in the making of the scale. I think that we are entitled to all of the

(Testimony of Emil H. Ovenberg.)

facts bearing on the question of how that scale was fixed."

I became a member of the so-called Conference Committee constituted of members of Local 550 and Local 42. That was a so-called Joint Conference Committee, which is referred to in the provisions of the contract of 1936. It did not involve any of the employers. We have so many committees, I attend so many meetings, we have a Conference Committee composed of five members from 550 and 42, and from that Committee elected from the local unions, the five members select the Negotiating Committee, which is composed of two members. I think now I was off the tack, — I thought you were referring to the Joint Conference Committee set up for minor disputes between employers and the unions, that are ironed out by that Joint Conference Committee's actions. I call it the Joint, but the Conference Committee of 550 and 42, which is the Joint Conference Committee, they would never meet the employers, only the Negotiating Committee, which was then appointed by and from the membership of the Conference Committee. I was a member of the Negotiating Committee.

In addition, we have a so-called Joint Conference Committee composed of Employers and Employees to settle disputes under the contract which might arise. How many times a Joint Committee between Employers and Employees actually meet,

(Testimony of Emil H. Ovenberg.)

I could not say, but I am positive in my answer that I attended two. I know of no instances of any other meetings of that body. I was a member of it.

In carrying out the 1938 contract, I conducted our negotiations with the mills described. I am not aware of any refusal [657] to work on the part of employees upon any material which was on the exempt list under that contract.

In 1938, negotiations were commenced relative to an employer-employee agreement. I was a member of the Negotiating Committee. There was Brother Kelly and, I think, Brother Helbing, and for 550, there was Brother O'Leary and myself. We met with the employers. Our demands then were for shorter hours, more money and also a closed shop. Our demands were not acceded to. We were in constant debate, squabbles and what not for a good many days there, and weeks, and it finally went into arbitration. The two locals and the employers agreed upon arbitration. That was the arbitration conducted with Judge Walter Perry Johnson as the neutral arbitrator. I had nothing whatever to do, no participation in the arbitration proceedings whatever. Dispute arose between Local 550 and its employers concerning application of the scale fixed by the arbitration. There was plenty of dispute by the representative of the Oakland employers, Mr. Nat Edwards. The scale fixed by the arbitration

(Testimony of Emil H. Ovenberg.)

was \$9 for eight hours work a day. The actual scale prevailing when we started the 1938 negotiations was \$8 a day for eight hours. The bosses over there would not pay \$9. Nat Edwards was very firm on no increase. The men were out on strike and a representative of the General Office came here, got the parties together, a compromise of \$8.50 was offered to the men at that time, including bringing in the Pittsburg plant, in Contra Costa County, and the Santa Clara Mill, the P.M. That was the aftermath from the settlement of the whole situation, as briefly as I can put it.

Mr. Dave Ryan went to the Home Office, in connection with the strike, to see General President Hutcheson. For men to go on strike, we had to do it legally. We had to have the sanction of the District Council and the General Office and conform to laws and by-laws of the General Office. We request [658] financial aid and unless we comply with all the laws, and the picture is laid before the President. We were hastening all of this movement, because a labor dispute was going on and it involved all the other groups, all of the counties and their building construction, and that was the haste in Secretary Ryan going back to the General Office to get this matter settled peaceably as far as possible, without going into any lengthy strike.

Joseph Cambiano was General Representative when he was here, appointed by President Hutcheson of the Home Office. He represents all of Cali-

(Testimony of Emil H. Ovenberg.)

fornia and maybe all of the Pacific Coast, wherever the General Office, I think, desires to send him. The six-county setup was handed down by the General Office that hours, wages and working conditions must be uniform in the six counties. The compromise went to \$8.50 and that is the scale that existed at the time of the current arbitration, going on right now, commenced. The present scale is \$8.50.

"Q. What is the scale for Millmen in Fresno?

"A. \$9 a day.

"Q. What is the scale in Vallejo? A. \$10.

"Mr. Burdell: I object to that and ask that it go out.

"The Court: Yes, it may go out. Objection sustained.

"Mr. Howard: If your Honor please, we will make an offer of proof, then, to include Stockton and Los Angeles, to show that the scale of Millmen at the present time is greater in all of those localities than here.

"The Court: The offer of proof has been made.

"Mr. Burdell: We object to the offer of proof on the ground that the wages and standards of living in localities other than the Bay Area are utterly immaterial and irrelevant.

"The Court: Sustained.

"Mr. Howard: Q. What is the existing Carpenters' wage scale? A. \$11 a day.

"Mr. Burdell: We object to that. [659]

(Testimony of Emil H. Ovenberg.)

"The Court: Yes, that may go out. Objection sustained.

"Mr. Howard: Q. Are lumber handlers a part of your craft?

"A. They belong to the same Brotherhood, they are members of the United Brotherhood of Carpenters and Joiners of America.

"Q. Are they skilled or unskilled workmen?

"Mr. Burdell: I object to that on the ground it is immaterial, irrelevant, and incompetent.

"The Court: Sustained.

"Mr. Howard: Q. Do you know the scale prevailing at the present time for lumber handlers in this locality?

"Mr. Burdell: I object to that on the ground it is irrelevant and immaterial to any issue in this case.

"The Court: Sustained."

In our contract of 1936, we would refuse to work on unfair material, and also in the contract of 1936, we would refuse to work on union material made at a lesser wage scale, or than the wages or working conditions that were in our contract in 1936. Conditions changed in 1938. Between 1936 and 1938 certain material was turned out by union organized mills which had a low wage scale. Refusal to work was on account of our contract in 1936 that we would refuse to work on any material made at a lesser wage, hours or working conditions, and

(Testimony of Emil H. Ovenberg.)

we had a right at that time in 1936 to do that. It had reference to union as well as non-union material in 1936. It is true that this question of low wage scale material did not arise until 1937. The picture changed in 1937. There was a difference of opinion between the General Office and our local unions here in 1937. Our General President Hutcheson ruled that any mill work made in a union mill would have the label and if made at a lesser wage scale and came into this district, we would have to work on it, and as I said before, on account of the fight in 1937, between the C.I.O. [660] and A. F. of L., they let the bars down. On account of the fight by the C.I.O., we thought we would fight the C.I.O. on the subject matter, just as hard here as we will fight the bosses. The C.I.O. situation did not exist relative to the 1936 contract. It is our continued policy to get a hundred per cent condition working only on union material, members of the Brotherhood. The other question which gave rise to a difference of opinion in our internal organization came at a later time in 1937, under a ruling of the General Office.

“Q. Now, with reference to all of your activities as a negotiator, or as a representative of your organization, or as an individual, were you acting with the intent to promote the interests of yourself and your organization?

“A. Sincerely and honestly—

“Mr. Burdell: I object to that and ask that the answer go out.

(Testimony of Emil H. Ovenberg.)

"The Court: Yes, it may go out.

"Mr. Burdell: I object to it as calling for the opinion and conclusion of the witness, and immaterial, irrelevant to any issue in this case.

"The Court: Sustained.

"Mr. Howard: If I may call to your Honor's attention, I believe that the question of intent is vital here, and exceedingly material. Your Honor will bear in mind paragraph 29 of the indictment, which has a direct bearing on this issue, in which the charge is made that these men were not intending to promote their own interest, or with an intent of promoting the objective of labor. I have cases here, your Honor.

"The Court: I have cases here, too. The ruling will stand.

"Mr. Howard: May I, in order that there be no question about the form of the question, then, make this offer of proof, that we offer to prove by this witness, who is a union negotiator [661] or representative of the union in connection with the negotiation of the disputes with employers in the period of 1936 and again in 1938, that he intended only to act in promotion of his union demands and objectives. I wish to make that as an offer of proof.

"The Court: Any objection?

"Mr. Burdell: Yes, we object to that as having no probative value at all, any question of intent is immaterial to this case, and further the intent

(Testimony of Emil H. Ovenberg.)

which is included in this offer is not consistent with any such intent as may be necessary to sustain the allegations of the indictment.

"The Court: Objection sustained.

"Mr. Faulkner: Your Honor is not ruling intent and motive does not enter into a conspiracy charge?

"The Court: Absolutely, that is what I am ruling, in a conspiracy charge.

"Mr. Faulkner: That intent does not enter into it?

"The Court: The intent is immaterial here at this time. That is what I am ruling.

"Mr. Faulkner: Very well."

As an individual or as a representative of my union organization, I had no other or different agreement than the written agreements which have been discussed in court and introduced in evidence. I, emphatically, did not have any oral agreement on any subject with the employees or employers. I had no secret agreement.

Cross-Examination

By Mr. Howland:

My best recollection was that during the period from 1936 to 1940, I was not a member of any committees of Local 550 in addition to the Conference Committee and the Negotiating Committees. I am on so many meetings and committees—take the sick committee, I am always visiting some sick member,

(Testimony of Emil H. Ovenberg.)

something [662] like that, but as far as any active committee, so far as meeting employers or anything like that, no.

I have been a delegate representing Local 550 to the Bay Counties District Council of Carpenters. Was vice-president of the Council, to the best of my recollection, from about 1922 to 1930. I went out one year as vice-president and went in again as president, but haven't held any positions since.

There was a Conference Committee from 1936 to 1938, between 550 and 42. That committee had nothing to do with direct dealings with employers. The minute the six-county setup came into the picture they had their representatives in a joint conference committee. I don't want to get mixed up with the joint conference committee set up to settle minor disputes between employers. Since the six-county setup in 1938 there has been a joint conference committee between all the locals in the six counties.

In the 1936 contract and negotiations, I added nothing whatever to the language of those paragraphs. I meant myself, personally. There were much more capable men on our side and on the employers' side to write those paragraphs up in our agreement. I recall what part of the year the change of policy occurred, during the year 1937. I know I met the general president here in San Francisco when he handed down that ruling, and I would say May or June,—the middle of the sum-

(Testimony of Emil H. Ovenberg.)

mer—some time around there. I am a little hazy, because I figured in the last five years, I guess, I had been in about five thousand union meetings and conferences.

Cross-Examination

By Mr. Faulkner:

I am employed as a millman. We won't work on non-union material outside of the exempt list which we have allowed our members to work on. I know of no instance where a union man ever [663] refused to work on material that went into cabinet shops as distinguished from the mill, whether it was on the exempt list or not. I know a great many articles and a great deal of material comes into cabinet shops not on the exempt list and haven't a union label, and they are worked on.

DAVID H. RYAN

called as a witness in behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Routzohn:

I have lived in San Francisco since 1904. I will be 70 next May. I am a carpenter. I began as an apprentice in 1889. I am a member of Carpenters' Local Union 483, San Francisco. I joined in 1904 and have been a member ever since. I was vice-

(Testimony of David H. Ryan.)

president and president one term. I am secretary of the Bay Counties District Council of Carpenters and have been for fourteen years. I sat in the 1935 negotiations as a representative of the District Council of Carpenters. The procedure is that after a local union or unions affiliated with the District Council of Carpenters have arrived at an agreement with their employers in their particular branch of the craft, that is submitted to the District Council for approval, and when approved is sent to the General Office as a matter of record and for approval, if there is any question about it.

In the 1935 negotiations, the negotiating committee was selected by the two local unions, and as secretary of the District Council I sat in there on all these meetings when they requested me to. I was a negotiator in the 1936 contract. That lasted, I would say, approximately two or three months. I signed the 1936 contract for the Bay Counties District Council of Carpenters, as one of the parties. At the time the negotiations opened in 1936 upon the unions' request for modification, we had [664] had a union-shop agreement with the employers in San Francisco, that is, the cabinet manufacturers and the planing mill owners in San Francisco, for a period of a year, approximately. That agreement I referred to was entered into in 1935 and was the first collective bargaining agreement entered into with a group of employers since the establishment of the open shop in 1921, four-

(Testimony of David H. Ryan.)

teen years. During the intervening time, from the time that was established in San Francisco between the cabinet manufacturers and planing mill owners, the union was trying constantly to persuade planing mill owners and a few cabinet shop proprietors and manufacturers to sign a similar agreement and establish that condition generally in the district. They had some success, but when we sat down in 1936 to get an increase in wages, then the argument started, so to speak. The employers accused the representatives of the unions of allowing their men, union millmen and cabinet makers, to go out and work for shops that had not signed the 1935 agreement for less than the scale and the men accused the employers, sitting in the conference, that their members diluted their union material that they were manufacturing in the plant with non-union material, in the manner similar as you have listened to here, take a door down there with a raised panel on it. You take the raised panel off it, the raised molding rather, or of a common single door as it comes as originally manufactured. They wanted them to take that apart and put the stamp on it and the men objected. I recall as my contribution to that discussion, I brought to the attention of the employers that the constitution and laws of the Brotherhood of Carpenters, and especially the obligation imposed upon an officer when he becomes installed, and I have been taking that obligation for over twenty years,

(Testimony of David H. Ryan.)

every year, to uphold the constitution, and it was very specific in stating the stamp could only be used on material that was manufactured a one hundred per cent union condition, and when the employers brought [665] the material in from the outside and used it in the fabrication of some material, it should have a stamp on it. It required our men to put a stamp on it that to all intents and purposes caused them to violate their obligation as members of the Brotherhood.

They pointed out some of the material was not available. They could not get in sufficient quantities and we insisted, at least I insisted, "Well if you want to go outside of the shops to get material, at least go out and get something that you would pay the same wages for if you made it here and get it made under union conditions, with a stamp on it."

This whole argument, I would not call it a conference, it was more like a fight than anything else, was based upon allegations of what had happened in the district, within the jurisdiction of the District Council, the fact being that in Alameda County, not parties to the agreement of 1935, there were a few that had gone along under union conditions and a lot had not. In those days, there were non-union shops in all four counties, but the planing mill owners and cabinet manufacturers in San Francisco were, the big bulk of them were on this side of the Bay, the big mills were a party to the

(Testimony of David H. Ryan.)

agreement. In Alameda County they were not. It was written up in this way, "In the interest of standardization of rates of wages and working conditions," they had a scale of 80 cents an hour here. Some mills signed up and paid eighty, some paid less and that was what the argument was about, didn't have a union scale, so in the interest of the standardization of rates of wages and working conditions, "it is agreed that no material will be purchased from; and no work will be done on any material or article that has had any operation performed on same"—That means the employers that purchased that material, we didn't purchase any—"by saw mills, mills or cabinet shops, or their distributors that do not conform to the rates of wages and working conditions of this agreement." [666] That was the agreement in 1936 as between the people who signed it, and then they put in the exempt list that is marked No. 16. The employers asked for the exempt list.

If any woman has ever gone to the butcher shop and bought a pot roast and had a skewer in it, that was a simple dowel. It is simply something run in circular cross section—just a pin, all sizes, from the size of a pencil up to three-quarters of an inch. It is to put in the round hole, put in the glue, stick the dowel in, and the dowel holds them together after the glue dries. I understand they make some dowels here. I sat in just as representing the District Council of Carpenters. I am a house car-

(Testimony of David H. Ryan.)

penter. I cannot testify with the personal knowledge that a millman can who works in a mill.

The third clause of that section was incorporated at the request of the employers. With reference to the succeeding sections to No. 16, "No millman or cabinet maker, a member of the Millmen's Union, shall work in any cabinet shop, planing mill or elsewhere in the City and County of San Francisco, or in the counties of Alameda, Contra Costa, Marin or San Mateo, in the capacity of a millman, cabinet maker or carpenter, unless the planing mill or cabinet shop in which he is working, be entitled to use the union label, etc." As it was testified, when they got into a conference they were accusing members of the Millmen's Union in this district of going out to non-union mills and working for less than 80 cents; working long hours and overtime, but after we finally got them to put in section 16 then they wanted to put a hitch on the millmen so they would have something, so we wrote up 17 to hold the employees down. That is my best recollection of what happened. In this matter they went a little better than the four counties covering the Bay District, they took in Contra Costa County. I don't know why, I didn't ask them.

I sat in on the 1938 negotiations. It is my [667] recollection the District Council of Carpenters served notice in the spring of 1938 of the desire to modify the present existing agreement. Conferences were held again and the millmen appointed

(Testimony of David H. Ryan.)

a negotiating committee, a conference committee, and asked me to sit in, and started all over again. The principal dispute at that time was wages. We could not get together on wages and some other minor matters, like the change in holidays; but the main dispute was wages and they couldn't agree and it was agreed to arbitrate again. They went to the joint committee set up between the Building Trades Employers Association and the Building Trades Council of San Francisco, those two organizations had an agreement covering the basic crafts, to the end that industrial disputes insofar as those crafts and employers were concerned would be settled by arbitration, or by both in conference. The cabinet manufacturers and planing mill owners in San Francisco were parties to it, San Francisco Employers Association and the Bay Counties District Council of Carpenters and Building Trades Council were parties, and they agreed to a conference committee and dropped this matter of an arbitrator into the lap of the joint committee. The employers' group in this joint committee suggested to the employers' group, Judge Walter Perry Johnson, and he was selected as the neutral arbitrator. I sat as one of the arbitrators representing the unions.

I recall the inclusion in the award of section 8 that became section 2 in the 1938 proposed agreement. When the agreement to arbitrate was reached, prior to the selection of the board, the San

(Testimony of David H. Ryan.)

Francisco planing mill owners and cabinet manufacturers signed an arbitration agreement. The planing mills and cabinet shops on the east side of the Bay, some in Contra Costa County, were represented in the conference by Messrs. Edwards, McConnell and Cox, sat in, neglected to sign an arbitration agreement. I asked the question after the arbitrator had been selected of [668] Mr. Edwards. I said, "Are you refusing to sign?" "No," he said, "my people have not yet authorized me," or words to that effect. In any event, they had not signed it. We went to arbitration and when it was decided in the Arbitration Award that the wage scale should be raised from \$8 to \$9, I said that award would have to be complied with; that there was a big group of planing mills and cabinet people in Alameda County represented by people in the conferences leading up to this matter who had not signed an arbitration agreement and had made a very bitter and stubborn fight in opposition to any increase, and now that the \$9 award was to be handed down, I might possibly be unduly suspicious, but I suspected they might not adopt it.

At any rate, I thought something should be put in this arbitration award before it was finally finished and handed down that might safeguard such a position. In any event, it was discussed and finally the arbitrator, Judge Walter Perry Johnson, was probably tired of listening to us, said,

(Testimony of David H. Ryan.)

"You gentlemen better see if you can decide what it is you want, try it out and hand it back and submit it to me."

We left, and this is what we finally agreed on, in this wording, and it is a provision that the \$9 agreement should include a provision to the effect it doesn't say "shall," it says "should" include a provision:

"It is deemed to be for the best interests of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement."

"That meant, as I interpreted the agreement, that it is binding on the planing mill owners and the cabinet manufacturers who signed the agreement, if and when they signed it. [669]

"In any event, the award was handed down with that clause in it, and then the trouble started."

Mr. Edwards, president of the planing mills and cabinet people in Alameda County, definitely stated they wouldn't pay it. He asked for a meeting of the Conference Committee. I don't remember who asked for it, but anyway we landed in the executive board of the conference committee of the Associated General Contractors and discussed it and I wanted the agreement lived up to on both sides of the Bay. The old argument, you couldn't have two

(Testimony of David H. Ryan.)

scales, one for Oakland and one here. There had always been two scales ever since I have been in San Francisco, and the agreement was being modified by the 1936 contract, to cover four counties.

Mr. Edwards did not think it desirable. The president, Mr. Hilp, of Associated General Contractors said, their board had held a meeting prior to coming in and decided they would not interfere. They thought it should be lived up to on both sides; they thought the wage scale set by the board was too high. However, everybody decided to go to arbitration. Their own people suggested the arbitrator, and the best thing to do is live up to it. That was one meeting. It would affect the general contractors naturally. If cabinet workers, mill owners get \$8 a day in Oakland and \$9 in San Francisco, you would not have to be a prophet to know where an employer would go for his millmen. He would go to Oakland for them, if he got that differential.

We had a meeting with the San Francisco Building Trades Employers Association, that joint committee again, and in that committee present were John Cahill and Harry Hilp of the contractors—I think Mr. McNally was secretary of that committee. Mr. Ricketts and Mr. Mead of the Building Trades Council, myself, Messrs. Ennes, Hart and Anderson, that I recall. Mr. Bernhardt of the home builders, I can't recall it now, but the representatives [670] meetings. I am referring to the Negotiating Committee—the union officials. At that time, I went to

(Testimony of David H. Ryan.)

the hospital and stayed for fifteen days and I could not testify as to what happened then, but when I came out they had reached an agreement and had voted to the effect they would take a reduction in the four counties of the East Bay District from that award, or from \$9 to \$8.50, and it would be \$8.50 in Santa Clara and Contra Costa Counties. There were many meetings held after the agreement was arrived at. The unions in the East Bay District voted to accept \$8.50 instead of \$9. The situation was in a turmoil. As an illustration, millmen and cabinet makers in San Francisco had three or four different wage scales. They were working for \$8 under the old scale up until around July, then they started to pay the new scale of \$9. They paid \$8 and gave a check for \$1 and turned it over to the man who handed it back, and that \$1 raise went into escrow until this thing was settled. They then went from \$9 back to \$8.50 and there were three scales in about three or four counties, and a lot of money had to be paid back to this fellow and that fellow. Also the Pacific Manufacturing Company, at Santa Clara, and Redwood Manufacturing Company, at Pittsburg, agreed to bring their scale up to \$8.50, basic. They had a sub-scale, a sub-standard scale in those two plants that included a lot of work that in San Francisco they were paying \$8.50.

I am not familiar with all of the meetings and the negotiations and the change in pay. It was just an

(Testimony of David H. Ryan.)

adjustment of a very complicated situation. Pacific Manufacturing Company had a label since May 1936 and Redwood Manufacturing Company signed the agreement, I think, in 1937. Redwood Manufacturing Company were bringing millwork by truck into Alameda County to some extent, and the Pacific Manufacturing Company, while all of this was going on, was still operating under the \$8 scale, and having that lower scale, and the Golden Gate Exposition being [671] in the market for a lot of cabinet work, etc., they went over there and grabbed a lot of contracts under the lower scale. That was just another dispute added to what they all had. I don't know what bearing it has upon this matter. Pacific Manufacturing Company have the label—they had it since 1936.

I have been advocating the use of the locally-made material ever since I have been an officer of the organization,—over twenty years. My meeting with Mr. Williams was the result of a meeting I had with Mr. Roos, of Roos Bros. I had a conversation with Mr. Roos beforehand. I learned, of course, it was evident to everyone, that he was doing quite a bit of remodeling and alteration job, and Brother Edwards knew he was going to put that work in there. A business agent had reported that they understood there was some work going to go in there from Grand Rapids fixtures, of Portland.

I asked for a conference with Mr. Roos and was

(Testimony of David H. Ryan.)

granted one, and went to his office. I can't recall the time or the date. I had never met him in my life and he wanted to know what was on my mind and I told him, and he let me talk and didn't interrupt me. I told him quite a lot. I told the Colonel—he was a Colonel in the army—that while I was a soldier his name was a household word. I felt I knew him by his reputation, that he had been for years interested in the welfare of San Francisco, was a civic leader, a prominent merchant, and I understood he was contemplating asking for bids for work from Portland, from the Grand Rapids Fixture Company, and I told him I felt he should get his work manufactured in the City and County of San Francisco, and I pointed out to him we had hundreds of men walking the streets, and that they were supported by charity. Those were the facts at that time. They were walking the streets. We had men in our organization that were; that the City and County of San Francisco taxpayers and property owners were being assessed for relief money, [672] bond issues, men were on charity, they needed the opportunity to work, and I got wound up and I said, being a prominent man, a civic leader, a policy ought to be observed in the matter of spending the money in the City and County of San Francisco and taking the men off the streets and putting them to work, and I got rather warmed up and was afraid he would throw me out of the place, so I quit, and he did not say anything for a

(Testimony of David H. Ryan.)

while, and he finally kind of smiled, and asked me if I would like to have a drink, and I had a drink, and he then told me, "Just what is your objection to fixtures manufactured by the Grand Rapids Fixture Company, in Portland?" And I said, "I have no objection to them," I said, "they are made under union shop conditions, and they have a label, and they are made at a lesser wage scale perhaps, but why go to Portland?" I had objection to the men who intended to install them, but I didn't talk to Mr. Roos about that.

Finally, he said that Mr. Williams was the architect and I would see Mr. Williams, and that is how I came to see Mr. Williams. I met Mr. Williams. I forgot whether there was somebody else there—I think Mr. Harry Smith, the manager of the local business of the Grand Rapids Fixture Company. I pointed out to Mr. Williams that Walter Jacoby was there doing some work, and he said he was going to install Grand Rapids Fixtures, and we did not like Walter Jacoby, who had a habit of getting laborers and give them a pair of overalls and some tools and get him on the job and do the work of a carpenter.

"Mr. Clark: I object to that.

"Mr. Routzohn: I think that is very important.

"The Court: I don't think it is.

"Mr. Routzohn: I suppose I should show, if your Honor please, that Mr. Jacoby had not been employing union labor.

(Testimony of David H. Ryan.)

"The Court: It is unimportant whether he did or not. [673] I do not see that it has anything to do with the issues here, at all.

"Mr. Routzohn: I would like to make that proffer, that Mr. Jacoby was not——

"The Court: —If you wish to ask the question you can.

"Mr. Routzohn: Q. Was it your objection that Mr. Jacoby, who was there for the Walter Manufacturing Company, did not comply with the labor conditions that were set forth in your contract?

"Mr. Clark: I object to that on the ground it is immaterial, irrelevant, and incompetent, and also leading.

"The Court: Sustained.

"Mr. Routzohn: Q. Tell us what you said relative to Mr. Jacoby?

"A. I told Mr. Williams that there were non-union men working in the basement of Roos Bros.—

"Mr. Clark: We move to strike that out as irrelevant.

"The Court: It seems to me it is immaterial here. I think you are going very far afield. It may go out."

I asked Mr. Williams if he had let the contract with the Grand Rapids Fixture Company, and my recollection is that he said he had or contemplated doing so, and he said; "Is there anything the matter with Grand Rapids fixtures?" And I said "As far as fixtures are concerned, no, but do you propose to

(Testimony of David H. Ryan.)

install them with union men upon the conditions under which we are operating here," and he said, "Yes," and I said, "The men on the job now are not union." I tried to induce Mr. Williams to install the fixtures under the established conditions here, or union conditions, and Mr. Williams said, "Sure, I will have union carpenters." I could not answer definitely who was installing the Grand Rapids fixtures, except that the business agent reported that Walter Jacoby said, "I am going to install them." When he went around to see who he had, he had non-union [674] men. Mr. Jacoby was non-union. Personally, he is a fine fellow, but outside of that, not. It was not a personal dislike I was describing.

I said, "Who are you going to let the rest of this to?" And Mr. Williams said, "If you will agree to install the Grand Rapids fixtures, I will agree to let all of the rest of them to local people," and I said, "All right." He said, "Will you try to help me get something like that?" And I said, "Sure." And something was drawn up. I had forgotten about it until I heard it read here the other day. In relation to the agreement it is simply this, I cannot recall it, I think that was just the way it was drawn up, but I agreed to install the fixtures, and as a matter of fact, under the laws of the Brotherhood we would have had to install them anyway, and Mr. Williams agreed that he would let all the rest of it in San Francisco, and I said, "I

(Testimony of David H. Ryan.)

will sign the agreement." I signed the agreement. One was trying to outsmart the other—that is all there was to it. I want to state that at no time, to Mr. Al Williams or Mr. McCreedy or Mr. Smith, did I ever say we would not install the union-made fixtures with the label of the Brotherhood on them—at no time.

I am the secretary of the District Council and outside of the District Council there is a business agent employed from various unions and there are a great number of them elected by their own unions and operating presumably according to the by-laws under the direction of the secretary of the council, but as secretary of the council I never refused to install union-made material, with a label, regardless of where it was made, or under what conditions, as far as wages are concerned. Nor has the District Council of Carpenters ever taken any official action on that. I cannot of my own personal knowledge testify as to what some business representative may have said or done without authority either of the Council or myself. I do not know of any [675] work where installation was refused on any union labeled-goods. That covers the entire period of the indictment, from 1936 and goes back further than 1936.

I remember meeting Mr. McCreedy. I cannot recall the conversation, except it was along the same lines, why couldn't they get the Grand Rapids fixtures on the market in San Francisco—words to

(Testimony of David H. Ryan.)

that effect. I cannot at this time recall the conversation, but I talked with Mr. McCreedy twice and I explained as definitely as I could that it was not the fact that these fixtures were made in Portland, or the wage scale up there, although lower than here, that there was a law of the General Brotherhood that the fixtures would have to be installed, but I was going to do what I considered good policy to promote the installation in San Francisco with men in San Francisco. I went over the same old story—there were unemployed men, men on relief, and I think I said in that conversation words to the effect that after all, while I was a labor man, I was after all the salesman the same way he was; that the men whom I represented had nothing but labor to sell and I was trying to sell that labor at so much per hour and day, and I had to sell it in the market—I could only market it where they lived; that their labor had to be here, I thought it was a good *thing* for the benefit of San Francisco, and I had a long line I am not going to worry you with. Of course, he did not agree with me, but I believed that. I do not recall saying anything about the mayor and meetings in San Francisco, and a vote having been taken by the people in San Francisco promoting local-made goods. The Portland scale was lower.

“Q. Now, do you recall making that sort of a statement to Mr. McCreedy?

“A. I may have stated it but I do not recall it.

(Testimony of David H. Ryan.)

I would deny that I said it but I do not recall it.

“Q. Did you talk about a difference in the scale?

“A. We may have. Can I make it clear that the difference in scale in so [676] far as the law of the organization is concerned, it is binding, and in so far as union stamped millwork is concerned it would not affect the situation.

“Q. In what way do you mean it would not affect the situation?

“A. If it was a very low scale, I would have worked all the harder to get it up to the local, but if they got it down here, we would have to put it up.

“The Court: We will be in recess for five minutes. Kindly remember the admonition.

(After recess:)

“Mr. Routzohn: Q. Mr. Ryan, referring again to your conversation with Mr. McCreedy—this is at page 742, line 5—I wish to read you this testimony of Mr. McCreedy: ‘Mr. Burdell: Q. Now, from your independent recollection, Mr. McCreedy, do you recall any further details of this conversation that you had with Mr. Ryan?

A. Well, I do since reading that.’

—He having read a paper.

“At that time I asked Mr. Ryan if there was any understanding with the local manufacturers here regarding our work in here, regarding the arrangement we had, and he said that there was.

(Testimony of David H. Ryan.)

"Q. He said there was such an understanding?

"A. He said there was.

"Did you make any statement of that kind that you had any understanding with the local employers about keeping work out that might be brought in here by his company?

"A. I do not recall the conversation. I do not recall Mr. McCreedy asking me the question. If he did ask me the question, I would answer it No. I do not recall it."

The only understanding that I have with the local employers, which includes the Associated General Contractors, the Associated Home Builders, the contractors in San Mateo County and the contractors in Marin County, is there will be no stoppage [677] of work or no limitation upon any kind of material that they bring in here and land on the job—it will be erected. That is not an understanding, except that the agreement does not provide for any limitation. That is the signed agreement. We have written agreements with the various groups mentioned. We do not have any verbal understanding with employer groups of any kind to the effect they will not be handled. We have no secret or verbal understanding with any employer group. We have trouble enough to make them live up to the written without taking their word for it.

I recall Mr. Smith testifying:

"Mr. Ryan said that after considerable further discussion that an understanding was entered into

(Testimony of David H. Ryan.)

or an agreement was entered into, I forgot just the word he said, whether it was an understanding or an agreement, whereby the local employers agreed to a wage scale which was satisfactory to the unions, provided the unions would protect them on outside competition.

"Is there such an agreement?"

"A. There is no such agreement. Might I explain?"

"The Court: Yes."

"So that it will clear, as an officer of the organization I have tried to persuade commercial houses and people who are in the market for sections of millwork to have it made here in this district under union conditions, for the purpose of securing employment for our men. And, of course, in doing this, it is to protect the local people because we are favoring local people in asking them to give it to local people. There is no agreement. We were doing that for years before I ever heard of the Cabinet Manufacturers Institute.

"Mr. Routzohn: Q. How long have you been doing that?"

"Mr. Clark: I object to that as immaterial, irrelevant and incompetent, how long he has been doing it.

"The Court: Sustained." [678]

We were doing it during the time of the indictment. We were not doing that as the result of an agreement or an understanding or a promise or a

(Testimony of David H. Ryan.)

meeting with employer groups in this community.

"Q. Reading farther from the testimony of Mr. Smith:

"Mr. McCreedy then brought up the question, 'Well, Mr. Ryan, don't you realize that that is against the law, it is a restraint of trade?' And Mr. Ryan said, 'Yes, we realize that fact, but, nevertheless, we are going to proceed along these same lines until such time as the Government stops us.'

"Did you make any such statement?

"A. I have no recollection of making any such statement.

"Q. Did you make any statement of that kind?

"A. I have no recollection; I am satisfied that I never made such a statement.

"Q. Did you make this statement:

"Q. What else was said?

"A. Well, the conversation carried on, and finally Mr. McCreedy said to Mr. Ryan, 'Well, I will be willing to enter into an agreement with you fellows whereby our company will agree on any equipment sold and shipped into the Bay area, we will agree to manufacture it under the same prevailing wage as exists in San Francisco at the time the equipment is shipped.'

"Do you recall that, Mr. Ryan?

"A. I do not.

"Q. Do you say that Mr. McCreedy did not make that statement to you?

"A. Well, I will not say; he may have made that statement, but I do not recall it.

(Testimony of David H. Ryan.)

"Q. Then Mr. Smith testified to the following question:

"Q. What did Mr. Ryan say?

"A. Mr. Ryan said, 'No, I could not consider that,' or 'We could not consider it.' He said, 'In the first place, we would never be able to convince the manufacturers here in San Francisco that such an agreement actually existed.' [679]

"Did you make that statement?

"A. I have no recollection of discussing that proposition.

"Mr. Routzohn: Q. Did you talk about the necessity of convincing manufacturers that you were keeping an agreement with them?

"A. I don't recall very much of what we talked about. I probably talked about making it in San Francisco. I probably did do that. I cannot recall, honestly.

"Q. Well, were you making those statements and representations to Mr. McCreedy that you did make that day in order to convince the manufacturers that you were carrying out some private agreement with them?

"A. Well, I didn't make the statement; you are asking me a hypothetical question, if I did make it and what my purpose was?

"Q. No, I am not asking a hypothetical question. It wouldn't be classified as that.

"The Court: Read the question.

"(Question read.)

(Testimony of David H. Ryan.)

"A. I did not make any such statement and representations.

"Mr. Routzohn: Q. Do you recall a Mr. Hosken who testified here and who was sales manager for the Grand Rapids Fixture Company?

"A. I recall him testifying.

"Q. Do you recall his testifying to a conversation had in Mr. Williams' office with Mr. Williams and Mr. Smith?

"A. I recall him testifying about it. I don't recall of meeting Mr. Hosken. I am not denying but what I might, but I don't recall it.

"Q. Reading from his testimony, at page 793, the question was asked by Mr. Burdell—it may be the following page:

"Q. Is that all that you recall?

"A. No. I mentioned to Mr. Ryan that I had a job, that I had a job, that I was figuring upon, I was going to figure on with Weinstein and I mentioned that job to him, whether I should spend any more time in trying [680] to get that job, I would not do it if I was going to be handicapped.

"Q. He told you the situation was just the same, is that right?

"A. Yes, they would not allow the men to install any of our equipment that had a lower wage scale than that which was prevailing in San Francisco.

"Do you remember making any statement of that kind?

"A. What year?

(Testimony of David H. Ryan.)

"Q. To Mr. Williams. That was your conversation with Mr. Williams. It doesn't state the year. It was at the time that you saw Mr. Williams.

"A. My answer is, I don't even recall the Weinstein job.

"Q. Sir?

"A. I don't recall the Weinstein job.

"Q. You don't even recall the Weinstein job. If Weinstein was mentioned, is that what you mean, you don't recall the name of Weinstein being mentioned; is that what you mean?

"A. No, I don't recall the Weinstein job. I suppose it is the Weinstein Department Store.

"Q. I don't know, myself.

"A. That is only a supposition on my part; I don't recall it.

"Q. Mr. Bernhardt at page 531, Mr. Zirpoli interrogated Mr. Bernhardt, Mr. Zirpoli asked this question:

"Q. You have already stated Mr. Ryan was present. Tell us what was said by this man.

"A. A statement was made at the end of the negotiations that we had overcome all our difficulties up to now and while it was not specifically put in the agreement that it would be understood that we would have no further trouble with, or no trouble with any of the stuff from the North.

"Q. That was the statement, was it?

"A. That was the substance of the statement. I don't know whether that was the words, exactly. [681]

(Testimony of David H. Ryan.)

"Now, do you recall the instance referred to by Mr. Bernhardt as to when you were present?

"A. Does that not refer to a meeting for the adjustment and settlement of this dispute about the wage scale in 1938 around July or August?

"Q. Yes.

"A. I don't recall that statement or making that statement, but I would like to make this statement: that prior to 1938 the District Council of Carpenters had a signed agreement with the Associated Home Builders, of which at that time Mr. Bernhardt was the president, and Mr. Bernhardt can't come on this witness stand and testify that any of his members—

"Mr. Clark: We would like the witness to answer the question. We move to strike it out.

"The Court: Let the answer go out and reframe the question.

"Mr. Routzohn: Q. Do you recall an instance with relation to a conference had with Mr. Bernhardt and members of the Associated Home Builders in 1938 after this award came through; Mr. Bernhardt was testifying—

"The Court: Do you remember any such conference, Mr. Ryan?

"The Witness: Your Honor, if it refers to a meeting that I had with the Associated Home Builders as to Associated Home Builders, I don't recall it.

(Testimony of David H. Ryan.)

"Mr. Routzohn: Q. There were other associations represented; I think you testified to that in chief, that you did attend a meeting with the Associated Home Builders and the Contractors' representatives, representatives of the Associated General Contractors and representatives from the East Bay Building Council, Marin County, and so forth, the Associated Home Builders, all of them met, I believe you mentioned that a while ago.

"A. Let me clear it up. I testified from the stand before the recess of a meeting called for the purpose of settling this dispute about the wage scale, the [682] same meeting that you will recall that Mr. McNally testified to as the secretary of that committee at which Mr. Bernhardt was present, and at that time the president of the Associated Home Builders, and Mr. John Cahill, Mr. Harry Hilp were present, Dewey Mead of the painters, James Ricketts, business agent of the Building Trades Council, the representatives of the Associated Home Builders, cabinet manufacturers, and I was present.

"Q. At that time you were discussing the 1938 award?

"A. We were discussing how we were going to get that wage scale settled and established.

"Q. That was immediately after the award was made?

"A. Yes.

"Q. Did you or did you not in that conversation, or in a conversation, at that conference there, make

(Testimony of David H. Ryan.)

the statement that Mr. Bernhardt attributes to you, that this agreement would end, that there would be no further trouble with, or no trouble with anyone on stuff from the North?

"A. I don't recall making that statement.

"Q. Well, did this agreement that had just been entered into and the award that had just been made have anything to do with the North, or did it have to do with local conditions?

"A. It didn't have anything to do with the North. I don't recall material from the North being mentioned at that time. It had to do with how we were going to get \$9 established, that is what we were talking about.

"Q. Do you remember Mr. Yates testifying, Mr. Ryan?

"A. I do.

"Q. About you having talked to him, or he talked to you in the presence of Al Edwards, a business agent?

"A. Yes, I do.

"Q. Page 485, or shortly after that, Mr. Yates was relating that you and Mr. Edwards were talking to him about entering into a contract with you, and at that time he testified that he had some lumber coming in from the North. The question was asked by Mr. Zirpoli, [683] "Did you have any lumber coming down from the North at that time?

"A. Yes.

"Q. What lumber did you have?

(Testimony of David H. Ryan.)

"A. Principally interior trim, doors, jambs, material like that.

"Q. How much did you have coming down from the North on order?

"A. Well, we had been bringing that material in ever since the first part of 1936.

"Then Mr. Zirpoli, four or five questions later, asked the question:

"What was said about that?

"A. They were demanding that we have stamped goods, the union agents here in the City, and if we were going to sign with them, enter into an agreement for a closed shop and stamping the goods we sent out of our place we wanted to know where we were going to get off on the present stock we had then that didn't have the stamp on it.

"Q. What did they say that they would do in that regard?

"A. That would be all right, they agreed to stamp the goods that we had in the house, so we could then dispose of it on union jobs, and they also agreed to let the other three cars come in that we had bought.

"Q. Did you have the goods in your shop stamped? A. Yes.

"You remember that, do you?

"A. You are asking me?

"Q. Yes. A. Yes, I recall it.

"Q. Well, did you at any time tell Mr. Yates you would object to his bringing this in from the

(Testimony of David H. Ryan.)

North as such, or were you objecting to his having unstamped lumber?

“A. Well, this meeting was held between Mr. Edwards, business agent of 42, and myself, Mr. Buckley and Mr. Yates. It is my recollection that Mr.——

“Mr. Clark: Your Honor, we object to that. He asked him a simple question and he wants to go off in a dissertation that I cannot object to because I cannot anticipate what he [684] is going to say. If counsel would just ask him one question——

“The Court: I think Mr. Ryan should answer the question directly, and after he has answered it, if he wishes to make a further explanation of it, he may.

“Read the question.”

(Question read.)

“A. I cannot answer definitely I knew of that, but I do know that we tried and were successful in inducing the Buckley Door Company to agree to handle union-made doors and materials. I want to make it clear, if I may be in order, that testimony says that we demanded something of him. Never in my life, in the years I have been a representative of labor, did I ever demand anything of an employer. Never did I tell him what he had to do. I told him how far we would go in cooperating with him. I have never used that language.”

“This situation developed out there: A number of doors came out on a construction job and they

(Testimony of David H. Ryan.)

didn't have the label, and somebody would handle it and they bounced back to the warehouse, and they wanted a meeting. The business agent told me about it. Mr. Edwards and I went out to Mr. Buckley's office and held a meeting with him and Mr. Yates and we discussed the situation, and they said they thought they were able to get union-made doors and were willing to handle them and try them out, but what were they going to do with what they had, and we went out to the warehouse and he had a warehouse full of doors and sashes that were non-union. We said we would put some sort of a stamp on them, not the union stamp, but something to indicate that when they went out on the jobs they would be used, and if he desired to enter into an agreement to handle union millwork, we would cooperate with him. He made the statement he was contemplating buying a mill, and he did get a mill from San Carlos, to mill his stuff without having to buy it. We got a stamp [685] that said, "This material is exempt. Bay Counties District Council of Carpenters," words to that effect. The business agent hired a man and stamped it, but after we had agreed to take care of all that, they referred to two or three carloads, one or two carloads at first that he had bought that hadn't come in.

We said, "All right, when these carloads come in, let us know." When that carload came in the Business Agent refused to put the stamp—somebody said he got in two or three more cars. A dis-

(Testimony of David H. Ryan.)

pute arose over—they just continued to bring in more than we agreed to, I believe.

In placing an exempt stamp on material to reach union agreements to have him handle union-made goods, it served two purposes—the goods went out on the job with the stamp would allow their use, and, No. 2, in stamping it in the warehouse, when that stuff was out, the rest of it would not have any kind of stamp on it. We wanted something so that we would know if they were going to continue to perform their agreement.

Nine out of every ten disputes, I would estimate, are adjusted on the job between the business agent and the employers. They are hired for that purpose.

I want to explain why it is not strange I don't recall the Weinstein job. There might have been a Weinstein job and it might have had a dispute, but unless it landed in my office, I wouldn't even recall it. [686]

I recall testimony of Mr. Christenson, about an anonymous telephone call relating to the Penney Store job, to the effect that the work would not be installed if the materials were not purchased in this community. I did not put in a call like that to Mr. Christenson. I don't recall putting in any call to anyone relating to the Penney Job. I absolutely did not put in the call that Mr. Christenson testified to. I do not know of anyone who did put in that call to Mr. Christenson.

(Testimony of David H. Ryan.)

I know of the Penney job. My recollection is it was handled by the business agent of San Mateo County, it was in his district. I do not know whether he made any effort to stop the Penney job.

I recall Mr. Hilp testified about the stoppage of lumber at Treasure Island, and the substance of the conversation I had with Mr. Hilp. He called and reported someone had ordered the lumber handlers or the laborers to stop handling, I think it was inch and a half T & G flooring, and I said something to the effect that I would look into it.

The District Council of Carpenters from the time the Exposition started until it was completed kept a paid representative there with an office. His name was Charles Eisen, and all carpenters employed had to clear through there. The agreement provided for that, and he was there to adjust disputes.

I got Mr. Eisen on the telephone and related this to him and it took some time. At that time the Exposition Company wouldn't let our officials have an automobile and he had to walk over the Island and around over the job. I told Eisen to find out and release it if somebody had been interfering with it. He came back and reported to me later in the day. I don't recall, but he said someone had given the order.

There were lumber handlers working over there

(Testimony of David H. Ryan.)

who were members of Local Union 2559. I heard testimony of someone [687] to the effect they were members of the hod carriers. Those lumber handlers were members of the Brotherhood of Carpenters, a semi-beneficial union in San Francisco. Some material was handled by the Laborer's Union in San Francisco, but my recollection is Eisen said someone over there told him it was hot cargo, or something like that. I instructed Mr. Eisen to release the material, that we had an agreement with Mr. Hilp. I don't know whether they got to work the next day or not, but it was released. That is all my knowledge of it.

Defendants' Exhibit T for identification is an agreement dated July 8, 1937, between San Francisco Building Trades Council and San Francisco Labor Council relating to the building and operation of Golden Gate International Exposition, signed by John Shelley and John O'Connell, president and secretary of San Francisco Labor Council, Watchman and Brown, president and secretary of Building Trades Council, and by Golden Gate International Exposition, by William T. Day, director of works.

"Mr. Routzohn: I wish to introduce this at this time, if your Honor please, and read it to the jury.

"Mr. Clark: We object, your Honor. It is immaterial. The charge here is not that the International Exposition entered into any combination.

(Testimony of David H. Ryan.)

but that the defendants entered into a combination.

"The Court: Let me see it.

"Mr. Clark: To keep from purchasing or selling or installing material in this area. We don't charge the International Exposition with any wrongdoing.

"Mr. Routzohn: We wish to show that the International Exposition entered into the same sort of a contract that we have introduced here in evidence, that there was an agreement to use local-made material.

"Mr. Clark: It is entirely immaterial, your Honor, what [688] the International Exposition did.

"The Court: The objection is sustained.

"Mr. Routzohn: May we proffer it then, your Honor please?

"The Court: Yes.

"Mr. Routzohn: In evidence.

"The Court: You are offering that?

"Mr. Routzohn: We are offering it in evidence so it will be taken care of.

"The Court: Is there an objection to it?

"Mr. Clark: Yes, we object to it on the same grounds, immaterial, your Honor.

"The Court: Objection sustained.

"(The document was marked "Defendants' Exhibit T for identification.")

(Testimony of David H. Ryan.)

"Mr. Routzohn: Q. Did you have a contract with the Exposition, Mr. Ryan?

"Mr. Clark: I object to that, your Honor, as immaterial whether he had a contract with the Exposition or not.

"Mr. Routzohn: I have not finished my question.

"Mr. Clark: Pardon me, sir.

"Mr. Routzohn: —in which it was agreed by the Exposition and the officials in charge of it that they would use in the Exposition only such materials as bore the union label and also would only use union labor?"

"Mr. Clark: I object to that, your Honor, as immaterial.

"The Court: Sustained.

"Mr. Routzohn: Q. And that the material that was to be used was to be local material, worked upon in this community?

"Mr. Clark: We object to that as immaterial.

"The Court: Sustained."

I recall the so-called Junior College job in 1939. Government's Exhibit 13, sub-number 1, for identification, is a [689] photostatic copy of a letter from Bay Counties District Council of Carpenters of March 20, 1939, addressed to David L. Barry, Clerk of the Board of Supervisors of the City and County of San Francisco.

The document was thereupon introduced in evi-

(Testimony of David H. Ryan)
dence as Defendants' Exhibit U, and was read to the jury as follows:

"This is on the heading of the Bay Counties District Council of Carpenters, etc., dated March 20, 1939.

"Mr. David L. Barry, Clerk,
Board of Supervisors,
City and County of San Francisco,
City Hall,
San Francisco, California.

"Dear Sir:

"The Bay Counties District Council of Carpenters desires to hereby register its vigorous protests against the awarding of a contract for cabinet work and millwork on the San Francisco Junior College to any firm outside of the City and County of San Francisco. We understand that the low bid for millwork and cabinet work on the above project is about \$190,000, submitted by a firm in Washington and that there is only approximately \$2,600 between that bid and the bid of a local manufacturer.

"We do not think it is necessary for us to present argument to you to show what the giving of that work to an outside firm would mean to our community in the loss of business and in the loss of payrolls. We have many unemployed millmen and cabinet makers in the mill industry.

"Every dollar that the City and County of San

(Testimony of David H. Ryan.)

Francisco spends for fabricated wood work outside of San Francisco means the loss of about fifty cents in wages to a millman or cabinet maker living in San Francisco, who, in most cases, is a tax payer and who have wives and families to support.

"Just in proportion as unemployment is reduced in San Francisco just in that proportion are the expenditures for relief reduced and just in that same proportion are the property owners [690] and the tax payers relieved of the burden of maintaining the unemployed in our community.

"In this connection, we want to bring to your attention the fact that an amendment to the City Charter, giving a 10% preference to our local manufacturers, was approved by the voters, a long time ago. This amendment required the Board of Supervisors to adopt an Enabling Act, which your Honorable body has so far failed to do. We are unofficially informed that the Board requested City Attorney O'Toole to draw up the proper ordinance and then let it lay there. We do not know where the fault lies, if any fault there be. We are not criticizing your honorable board or the office of the City Attorney but we say to you that in our opinion we feel that immediate steps should be taken to rectify the present situation to the end that the City Charter, as approved by the voters, be made immediately effective or that some other steps be immediately taken to keep the payrolls

(Testimony of David H. Ryan.)
for municipal work in the City and County of San Francisco where they belong.

"With best wishes, we remain,

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS.

D. H. RYAN,

Secretary.

ALEXANDER WATCHMAN,

President

San Francisco Building and
Construction Trades
Council.' "

Government's Exhibit 115-30 for identification is a letter dated August 11, 1939, addressed to Mayor Rossi, written by the Bay Counties District Council of Carpenters.

"Mr. Routzohn: Do you wish to see this, Gentlemen?

"The Court: I suppose it is along the same line, is it?

"Mr. Routzohn: On similar, but I think a little bit more comprehensive in its language, and I would like to read it into the record, if your Honor please. [691]

"The Court: If it is along the same line I cannot see any necessity for it.

(Testimony of David H. Ryan.)

"Mr. Routzohn: It is just a little bit more comprehensive in its scope.

"Mr. Clark: We would like to object again as immaterial. We are not objecting to Mr. Ryan's efforts on this job, what we are objecting to is the combination that he entered into to keep these people from bringing in material and its being installed. That is entirely immaterial to the Government's case.

"The Court: You can make the offer. I think you have gone far enough. Make the offer.

"Mr. Routzohn: My only purpose in all of this is to explain the gentleman's duties..

"The Court: He has explained that quite fully already.

"Mr. Routzohn: We wish to offer the letter, addressed by Mr. Ryan, Secretary of the Bay Counties District Council of Carpenters, dated August 11, 1939, which is marked for identification Government's Exhibit 115-30.

"Mr. Clark: We object to it as immaterial and self-serving.

"The Court: The objection is sustained.

(Testimony of David H. Ryan.)

**PLAINTIFF'S EXHIBIT NO. 115-30
FOR IDENTIFICATION**

(Copy)

**BAY DISTRICT COUNCIL
OF CARPENTERS**

San Francisco and Vicinity

A. L. McDonald, President

D. H. Ryan, Sec'y-Treas.

Office

Building Trades Temple

Fourteenth and Guerrero Sts

Telephone Market 1806

San Francisco, Calif.

August 11, 1939.

**The Honorable Angelo J. Rossi,
Mayor of the City of San Francisco,
City Hall,
San Francisco, California.**

Dear Sir:

In relation to the construction of municipal projects in the City and County of San Francisco with special reference to the undisputed desirability of allocating to local manufacturing plants and local labor, the largest possible amount of the work in connection with such projects, may the undersigned respectfully suggest steps that could be taken by the officials and awarding officers of the City and County of San Francisco, in the exercise of their

(Testimony of David H. Ryan.)

authority, that would retain for local plants and local labor, practically all of such work.

From the time a project is authorized and until the general contract for it is awarded and signed, there are three points we wish to refer to you:

1. At the time the architect is selected to draw up the plans and specifications, we suggest that it be impressed upon his mind that within reasonable limits, the cost of any item or classification of material, supplies, or equipment is not as important as is the question of whether or not it is bought and fabricated in the City and County of San Francisco.

We suggest that the millions of dollars in bond issues that the property owners and tax payers have met and still have to meet to relieve unemployment, makes it absolutely foolish to have equipment and fabricated materials manufactured outside of San Francisco in order to save a few dollars on the contract price, when such a practice keeps local plants idle, keeps local labor on the streets and adds \$10 to the burden of San Francisco in meeting unemployment expenses for every one dollar saved on the contract price.

2. We suggest also, that when the complete plans and specifications are before the awarding officers for approval that representatives of local firms and local labor be given an opportunity in the presence of the architect and awarding officers to learn in what particular part of the work the architect has specified some material or item of

(Testimony of David H. Ryan.)

equipment made outside of San Francisco "or its equal", and being informed what special advantage lies in such a stipulation that makes it paramount to local manufactured equipment.

3. We suggest in conclusion, that when the plans and specifications are ready for delivery to the prospective bidders that a time and place be set when they will be made available and that again in the presence of the awarding officers, representatives of local firms and local labor, the desirability of having all sub-contracts awarded to local firms be opened to discussion in an endeavor to reach an agreement with the prospective bidders to confine their sub-contracts to local firms.

Sincerely yours,

D. H. RYAN,

Secretary,

Bay Counties District Council of Carpenters.

[Endorsed]: Filed Aug. 14, 1942.

"Mr. Routzohn: Q. Mr. Ryan, in 1935 was there an amendment adopted to the City Charter to buy local made goods?

"Mr. Clark: We object to that as irrelevant and immaterial to any issue in this case.

"The Court: Sustained."

"Mr. Routzohn: I first wish to offer in that

(Testimony of David H. Ryan.)

connection a pamphlet entitled "Argument for Charter Amendment," and on page 5 of the pamphlet, entitled "Help Your City"——

"Mr. Clark: I object to your reading that.

"Mr. Routzohn: That is the only way I can identify it.

"Mr. Clark: He can identify it, and say he has offered Defendants' Exhibit For Identification. He might otherwise [692] as well introduce it in evidence.

"The Court: Have you finished with your offer?

"Mr. Routzohn: Yes, that portion.

"The Court: Is there an objection by the Government?

"Mr. Clark: Yes.

"The Court: What is the objection?

"Mr. Clark: Objected to as immaterial to any issue in this case.

"The Court: Sustained.

(The document was marked "Defendants' Exhibit V For Identification.")

DEFENDANTS' EXHIBIT V FOR IDENTIFICATION

HELP YOUR CITY

Vote "Yes" on Charter Amendment No. 6
Charter Amendment No. 6 provides for a preferential in behalf of San Francisco taxpayers doing

(Testimony of David H. Ryan.)

business with the City and County of San Francisco.

It will encourage home industry in the same way in which every other city and county in the State of California encourages home industry.

It will give the people of San Francisco—taxpayers, workingmen, workingwomen, manufacturers and contractors—the full benefit of the \$20,000,000 of P. W. A. bonds which were voted by the people of San Francisco to provide work and trade for the people of San Francisco.

Because of a flaw in the present charter, it has occurred that San Francisco labor and San Francisco manufacturers and San Francisco taxpayers are denied the benefits which were intended by the people of this community when they voted so overwhelmingly for the P. W. A. bonds.

Many of the benefits and much of the work and wages are going to people of other communities, some of which refused to follow the lead of San Francisco and cooperate in the Federal Public Works Program.

This amendment simply means that your money will be paid to you and your workers.

Helps San Francisco

This amendment would give a 10 per cent preferential to San Francisco bidders on P. W. A. and other City contracts.

This amendment is proposed jointly by business and labor organizations.

(Testimony of David H. Ryan.)

Here are some examples of why the business interests and the working people urgently recommend the adoption of this amendment.

The Glen Park School, costing approximately \$500,000, is now being built. All of the millwork is being done in a distant city because the local planing mills were a mere \$211 higher in their bid than were the outside planing mills.

Sometime ago a contract for \$32,000 worth of fire hydrants was let. The low bidder, whose plant is in Los Angeles, was \$411 less than the bid of a San Francisco firm.

Committees representing the San Francisco Chamber of Commerce, the San Francisco Labor Council and the San Francisco Junior Chamber of Commerce made every effort to retain this business, being paid for by the people of San Francisco, in this City. They finally had to give up because the present charter makes it illegal to give preference to home industries.

It was not very long ago when the City and County of San Francisco was buying soap made in China because the Chinese manufacturers of soap could underbid the San Francisco manufacturers of soap by a few dollars.

Other Cities

But what happens in other communities?

San Francisco manufacturers are stopped from bidding for public work in almost every city and

(Testimony of David H. Ryan.)

county in California; in fact, bids by San Francisco firms are often thrown out simply because these firms are outside the counties taking bids.

In the case of the school job, mentioned above, this is what actually happened:

The mills in the distant city are virtually guaranteed every bit of public work that goes on in that city. Having this guarantee, it is easy for them to underbid the San Francisco planing mills by \$211.

The fact is that San Francisco firms have given up bidding on public work to be done in communities less than ten miles distant from this city. The day when a San Francisco concern won a contract in Los Angeles is so far in the past that no one can remember when it was.

Here's the Picture

And so we have this picture:

The workingmen and the taxpayers and the manufacturers of San Francisco have voted to spend millions of dollars to stimulate local business and to give employment to local people.

But because of this provision in the city charter, the millions that they have voted and which they are going to pay must be spent to stimulate business and provide employment in other communities.

Let's Help Ourselves

Charter Amendment No. 6 remedies this unwholesome and unprofitable condition by giving

(Testimony of David H. Ryan.)

a 10 per cent preferential in behalf of the industries and manufacturing plants and workmen who live in San Francisco, who work in San Francisco and who pay taxes in San Francisco. (The preferential in a city not far distant in behalf of its local industries is 20 per cent.)

Vote "Yes" on Charter Amendment No. 6

And Help Business and Labor

Authorized by the Board of Supervisors.

[Endorsed]: Filed Aug. 14, 1942.

"The Court: Do you wish to offer some amendment to the Charter?

"Mr. Routzohn: Yes, the Charter Amendment No. 6, entitled "Preference For Local Labor And Industry." I think it has a material bearing on this case.

"The Court: Is there any objection?

"Mr. Clark: Yes, your Honor, immaterial.

"The Court: Sustained.

(The document was marked "Defendants' Exhibit W for Identification")

DEFENDANTS' EXHIBIT W FOR IDENTIFICATION

CHARTER AMENDMENT No. 6

Preference for Local Labor and Industry

Describing and setting forth a proposal to the qualified electors of the City and County of San

(Testimony of David H. Ryan.)

Francisco, State of California, to amend the Charter of the city and county by amending as herein set forth Section 98 thereof dealing with contractors' working conditions under contracts for public work or improvements, and providing for the allowance of a preference not to exceed ten per cent in favor of articles to be used on public works or improvements, which said articles are manufactured, fabricated or assembled within the City and County of San Francisco, as against similar articles manufactured, fabricated or assembled elsewhere.

The Board of Supervisors of the City and County of San Francisco hereby submits to the qualified electors of said city and county at the special election to be held on the 2d day of May, 1935, to amend the Charter of said city and county by amending Section 98 thereof dealing with contractors' working conditions under contracts for public works or improvements, and providing for the allowance of a preference not to exceed ten per cent (10%) in favor of articles to be used on public works and improvements, which said articles are manufactured, fabricated or assembled within the City and County of San Francisco as against similar articles manufactured, fabricated or assembled elsewhere.

Contractors' Working Conditions

Section 98. Every contract for any public work or improvement to be performed at the expense of

(Testimony of David H. Ryan.)

the city and county, or paid out of moneys deposited in the treasury, whether such work is to be done directly under contract awarded, or indirectly by or under sub-contract, sub-partnership, day labor, station work, piece work, or any other arrangement whatsoever, must provide: (1) That in the performance of the contract and all work thereunder, eight hours shall be the maximum hours of labor on any calendar day; (2) that any person performing labor thereunder shall be paid not less than the highest general prevailing rate of wages in private employment for similar work; (3) that any person performing labor in the execution of the contract shall be a citizen of the United States; (4) that all laborers employed in the execution of any contract within the limits of the city and county shall have been residents of the city and county for a period of one year immediately preceding the date of their engagements to perform labor thereunder; provided, however, that the officer empowered to award any such contract may, upon application of the contractor, waive such residence qualifications and issue a permit specifying the extent and terms of such waiver whenever the fact be established that the required number of laborers and mechanics possessing qualifications required by the work to be done cannot be engaged to perform labor thereunder.

The term "public work" or "improvement," as used in this section, shall include the fabrication,

(Testimony of David H. Ryan.)

manufacturing or assembling of materials in any shop, plant, manufacturing establishment or other place of employment, when the said materials are of unique or special design, or are made according to plans and specifications for the particular work or improvement and any arrangement made for the manufacturing, fabrication or assembling of such materials shall be deemed to be a contract or a sub-contract subject to the provisions of this section.

The board of supervisors shall have full power and authority to enact all necessary ordinances to carry out the terms of this section and may by ordinance provide that any contract for any public work or improvement, or for the purchase of materials which are to be manufactured, fabricated or assembled for any public work or improvement, a preference in price not to exceed ten per cent shall be allowed in favor of such materials as are to be manufactured, fabricated or assembled within the City and County of San Francisco as against similar materials which may be manufactured, fabricated or assembled outside thereof. When any such materials are to be fabricated, assembled or manufactured by any sub-contractor or materialman for the purpose of supplying the same to any contractor bidding on or performing any contract for any public work or improvement, said sub-contractor or materialman manufacturing, fabricating, assembling or furnishing said ma-

(Testimony of David H. Ryan.)

materials manufactured, assembled or fabricated within the City and County of San Francisco shall be entitled to the same preferential as would any original contractor or materialman furnishing the same if the board of supervisors shall by ordinance so provide. When any ordinance shall so provide any officer, board or commission letting any contract may in determining the lowest responsible bidder for the doing or performing of any public work or improvement add to said bid or sub-bid an amount sufficient not exceeding ten per cent in order to give preference to materials manufactured, fabricated or assembled within the City and County of San Francisco.

Ordered Submitted—Board of Supervisors, San Francisco, March 20, 1935.

Ayes: Supervisors Brown, Colman, Gallagher, Havenner, Hayden, McSheehy, Ratto, Roncovieri, Schmidt, Uhl.

Absent: Supervisor Shannon.

I hereby certify that the foregoing charter amendment was ordered submitted by the Board of Supervisors of the City and County of San Francisco.

J. S. DUNNIGAN,
Clerk.

“Mr. Routzohn: We are also offering it in evidence. I also wish to offer in evidence along the

(Testimony of David H. Ryan.)

same lines, your Honor, the charter of the City and County of San Francisco at pages 56 and 57.

“Mr. Clark: We object to that as immaterial, your Honor.

“The Court: Sustained.

(The document was marked “Defendants’ Exhibit X For Identification.”)

DEFENDANTS’ EXHIBIT X FOR IDENTIFICATION

Contractors’ Working Conditions

Section 98. Every contract for any public work or improvement to be performed at the expense of the city and county, or paid out of moneys deposited in the treasury, whether such work is to be done directly under contract awarded or indirectly by or under sub-contract, sub-partnership, day labor, station work, piece work, or any other arrangement whatsoever, must provide: (1) That in the performance of the contract and all work thereunder eight hours shall be the maximum hours of labor on any calendar day; (2) that any person performing labor thereunder shall be paid not less than the highest general prevailing rate of wages in private employment for similar work; (3) that any person performing labor in the execution of the contract shall be a citizen of the United States; (4) that all laborers employed in the execution of any contract within the limits of the city and county shall have

(Testimony of David H. Ryan.)

been residents of the city and county for a period of one year immediately preceding the date of their engagements to perform labor thereunder; provided, however, that the officer empowered to award any such contract may, upon application of the contractor, waive such residence qualifications and issue a permit specifying the extent and terms of such waiver whenever the fact be established that the required number of laborers and mechanics possessing qualifications required by the work to be done cannot be engaged to perform labor thereunder.

The term "public work" or "improvement," as used in this section, shall include the fabrication, manufacturing or assembling of materials in any shop, plant, manufacturing establishment or other place of employment, when the said materials are of unique or special design, or are made according to plans and specifications for the particular work or improvement and any arrangement made for the manufacturing, fabrication or assembling of such materials shall be deemed to be a contract or a sub-contract subject to the provisions of this section.

The board of supervisors shall have full power and authority to enact all necessary ordinances to carry out the terms of this section and may by ordinance provide that any contract for any public work or improvement, or for the purchase of materials which are to be manufactured, fabricated or assembled for any public work or im-

(Testimony of David H. Ryan.)

provement, a preference in price not to exceed ten per cent shall be allowed in favor of such materials as are to be manufactured, fabricated or assembled within the City and County of San Francisco as against similar materials which may be manufactured, fabricated or assembled outside thereof. When any such materials are to be fabricated, assembled or manufactured by any sub-contractor or materialman for the purpose of supplying the same to any contractor bidding on or performing any contract for any public work or improvement, said sub-contractor or materialman manufacturing, fabricating, assembling or furnishing said materials manufactured, assembled or fabricated within the City and County of San Francisco shall be entitled to the same preferential as would any original contractor or materialman furnishing the same if the board of supervisors by ordinance so provide. When any ordinance shall so provide any officer, board or commission letting any contract may in determining the lowest responsible bidder for the doing or performing of any public work or improvement add to said bid or sub-bid an amount sufficient not exceeding ten per cent in order to give preference to materials manufactured, fabricated or assembled within the City and County of San Francisco. Ratified by the Legislature, May 17, 1935.

“Mr. Routzohn: I would like to have a stipula-

(Testimony of David H. Ryan.)

tion that the proper foundation has been laid for offering these exhibits in evidence. [693]

"The Court: Yes.

"Mr. Routzohn: Can we have that stipulation so that there will be no question about what the offer is?

"Mr. Clark: We object to the materiality of it.

"The Court: There can be no question, I take it, that the proper foundation has been laid.

"Mr. Clark: We are not objecting to it for lack of foundation.

"Mr. Routzohn: You have no objection along that line, your objection is merely to the materiality of it?

"Mr. Clark: Materiality of it."

We also have contracts with the contractors and home builders in this community. All contracts with the general contractors and home builders are negotiated directly through the District Council of Carpenters. The District Council of Carpenters is composed of delegates from millmen as well as delegates from other unions.

Defendants' Exhibit Y for identification is a District Council of Carpenters original signed agreement between the Bay Counties District Council of Carpenters and the Associated General Contractors of San Francisco, effective May 1, 1940, up to May 1, 1945.

"Mr. Routzohn: If your Honor please, we wish to introduce this in evidence at this time.

"Mr. Clark: We object as being immaterial; it

(Testimony of David H. Ryan.)

is a contract between the Council and the General Contractors; the General Contractors are not a party to this case, and the contract has no bearing on the case, whatever.

“Mr. Routzohn: We wish to show in addition to that that it anticipated the action of Congress the other day by having compulsory arbitration and settlement of labor disputes entered into by these very men who are accused in this Court, and the [694] contract runs until 1945.

“The Court: Objection sustained.

“Mr. Faulkner: Might I say, if your Honor please, although this is offered in conjunction with his own group, the implication or the claim is made by the Government, I assume, in this case that some arrangement existed between the Carpenters and other defendants in this case that they would not install material. If that is their claim it would have to be pursuant to an understanding between the Carpenters and the Cabinet Men, among others. Now, then, what is that understanding, is it oral or written? It is certainly relevant in this case to prove that the only understanding between the Cabinet Men and the Carpenters is a written agreement. There is no such provision, otherwise there must be some evidence of an oral agreement. If Mr. Clark says that there is an oral agreement and he does not rely on any written agreement between the Carpenters who do the milling and the cabinet men, then it could not be material. If he states that, and if he relies on a written agree-

(Testimony of David H. Ryan.)

ment, these millmen contracts have nothing to do with installation. That is quite clearly demonstrated in this record; the installation of material is done solely by carpenters who are covered by a separate agreement and they have nothing to do with the millmen group. If Mr. Clark says there is a written agreement between the Carpenters not to instal in violation of the Sherman Act, then any written agreement would be admissible. If he says there is no written agreement that has to do with it and he relies solely on an oral agreement, I think the record should be clear at this time.

"The Court: I do not think it is material."

"Mr. Routzohn: Q. Now, Mr. Ryan, from 1935 on, 1936, 1937, 1938, 1939, 1940, and 1941 up to the present time, have you had a continuous labor dispute with the C. I. O. in your organization? [695]

"Mr. Clark: We object, first, as immaterial; second, as calling for the opinion and conclusion of the witness.

"The Court: The objection is sustained.

"Mr. Routzohn: I want to prove there has been a labor dispute here, not only with these men, but with a dual organization.

"The Court: The objection is sustained."

Defendants' Exhibit Z for identification is a bulletin issued by the California State Council of Carpenters, dated October, 1936.

My name is in the list of mills, etc.

(Testimony of David H. Ryan.)

"Your Honor, we object to this document as immaterial.

"Mr. Rontzohn: Do you wish to see it, your Honor?

"The Court: Hand it to the Clerk.

"Mr. Rontzohn: The list, particularly.

"The Court: All you have to do is read the first paragraph to see it is not material.

"Mr. Rontzohn: Well, we wish to offer it in evidence, your Honor.

"The Court: Objection sustained."

Defendant's Exhibit AA for identification is a rubber stamp of the United Brotherhood of Carpenters and Joiners of America, used for imprinting on millwork and wood, and so forth.

Thereupon the stamp was marked "Defendants' Exhibit AA."

Defendants' Exhibit BB for identification is a copy of Carpenters Weekly Bulletin, dated April 1, 1938; no signature; B.W.A. No. 34.

"Mr. Rontzohn: We wish to introduce that in evidence, if your Honor please.

"Mr. Clark: That is objected to as immaterial and self-serving.

"The Court: Sustained."

I have not at any time had any private understanding [696] or any agreement, verbal agreement, with any of the employers in this community, relating to the installation or the manufacture of mill

(Testimony of David H. Ryan.)

work and patterned lumber. I do not know of any such arrangement or understanding or agreement between any union men and any employer in this community.

Whether all of the agreements that we have made have been reduced to writing, would depend upon what you would call an agreement. I have not, and do not, worked on any agreement, verbal or otherwise, or an understanding with any employer whereby certain goods were to be denied admittance into San Francisco and its environs.

“Q. In all of the negotiations that you have had with employers, ranging from 1935 on up to the present time, I will ask you whether or not there has ever been in your mind an intent or purpose to restrain interstate commerce.

“Mr. Clark: We object to the intent and purpose of this witness as immaterial to any issue in the case.

“The Court: Sustained.”

Cross-Examination

By Mr. Clark:

I testified in regard to my obligation under the Constitution of the Brotherhood, and said I had been taking that obligation for some twenty years. That obligation was an obligation as an officer of the organization to uphold the constitution and laws. All members take an obligation.

My testimony was that when the men were required to place the stamp on non-union materials,

(Testimony of David H. Ryan.)

after doing a little inconsequential work upon it, that was to all intents and purposes calling on them to violate their obligation. For instance, the doors, where a little work was done and then the employer would put the stamp on it through the steward in the shop. [697]

We asked them to get the material at least that has a union stamp and where they pay the same wage, or get it made here and get it made under union conditions with a stamp on it.

When I testified, "At least go out and get it stamped," I meant to go around the corner to a shop, wherever it was, but there was no argument that I recall about where to go. The complaint at that time that the representatives of the unions lodged was that they were going across to Alameda County and to non-union shops in the district and getting material and making them work on it. The material they were getting was not union-made. The objection was the union shop was buying the material locally from other shops that had not signed an agreement and were still working open shop and not paying the scale.

They would buy it from some mill or some builders' supply in San Francisco where they could get it. They were non-union doors. Where the material originally came from would depend on the door. If it was hardwood or Philippine mahogany, it would come from the Orient; if it was Oak, the material would come from wherever they could get their Oak, mostly through the South. If it was

(Testimony of David H. Ryan.)

Oregon pine doors, it probably came from the North. The material came from all parts of the country, but they would buy it locally through a mill or broker. It is not that, they would place the order locally and then the material would be shipped in. You are assuming I know a lot about the business, but as a matter of fact I don't know so much about that.

When we told the employers to go out and get things at a union shop locally, they insisted on getting it wherever they could. They didn't want to be restrained or hampered, they just wanted to go out and buy it wherever they could. It is true that some of the material could not be bought from other shops here. We were not objecting to the employers going [698] out and buying material wherever they liked, but if he brought it into a shop and wanted to turn it out of the shop as a union-made product, we objected to placing the union label on it unless he bought it from union-made material, that was the only question as I recall it. The upshot of it was they had the exempt list. That has always been their idea, not ours.

That material set forth on the list did not bind them with the wording or stipulation contained in 16, right ahead of it, in which they agreed they wouldn't buy any material or do any work on it unless it had been made, and that was exempted, that they may buy that and let it come—exempted from any restraint in so far as the union was concerned.

(Testimony of David H. Ryan.)

The first paragraph in 16 of the 1936 contract said that no material will be bought or work done thereon. That meant the employers would not buy that material or require the men to work on it under those conditions of lower wage scale. That would cover any material they bought and proposed to have the men work on. We didn't care where it was manufactured as long as it had the union label on it and made under conditions similar. If they wanted us to work on it, and then call it a union product and put a stamp on it——

If it had the union label and was manufactured at a lower wage scale, than in San Francisco, that language in there says, "At the same wage scale." The argument around the conference board was that the employers said, "Well, we can't make this stuff in quantities; yes, we can make it, but we can't make enough of it," and if they were going out to buy something with a stamp on it, they should buy something at least made under the same wage scales. We didn't want them to go out and buy it; they could make it instead of going out and getting it cheaper. As a matter of fact, a lot of those things on the exempt list we felt they were able to make, but they bring [699] material in there and ask the men to work on it, material that was not only non-union, but made at lower wage scales, and we felt it was not because they couldn't make it, but they were going out and getting it a little cheaper.

"Q. What you wanted them to do was to make it locally?

(Testimony of David H. Ryan.)

"A. It didn't make any difference, we were trying to kill that argument of theirs that they had to go out and buy it. We were dealing with a local situation. We had just been organized for a year and we were all surrounded in Alameda County with non-union planing mills."

This paragraph, as far as we were concerned, was to require the employers to buy union materials at comparable wage rates that were paid here, except on those items that were on the exempt list, as to the material they required to fill out their orders that they said they required. That exempt material must be manufactured at a wage rate comparable to the local rate.

When they started to talk about an exempt list after we had written 16, about getting doors in quantities instead of making them here, the Oregon pine door, comes from California but some came from Oregon and the North. The molding and the door jambs is made in quantities in Oregon because they can manufacture it in such large quantities. Up to 1935 there had been no union shop agreements here in San Francisco since 1921; it was all open shop. The warehouses were chock-ful, and the lumber yards had all kinds of materials, because not only the Northwest, but the South, everywhere else, all open shops, non-union-made material, we had fourteen years of that without regulation.

In 1936 the employers did talk about the competition that was affecting them from outside mills that

(Testimony of David H. Ryan.)

were selling here. Those mills start from San Diego and go clear to Vancouver. They cover a lot of ground. [700]

I was constantly arguing for the manufacture of all of their stuff in San Francisco, yet we had to realize there was a certain limit to their so-called competitive area. They would say, "We can't manufacture millwork in San Francisco to compete with San Diego." I would argue, "You have no legitimate right to get a wage scale like that where you get a market, say in San Diego, and you pay transportation on it; they have a right to their market, and so with Los Angeles; you are trying too big a territory as your competitive territory; stay a little closer to home."

They didn't agree with it. They mentioned mills all the way from San Diego to Vancouver and Panama and the Deep South; they mentioned wage rates in North and South Carolina and all through there; ten cents an hour, something like that. I told them they took in too much territory. They always spoke of their competition; they manifested a lot of concern on that ground. We argued over the exempt list. So far as the millwork representatives there, I am a house carpenter and didn't know all the technical details of it. The millmen did most of the arguing, trying to keep that exempt list down as short as they could. They didn't want to exempt. They were interested in what they were buying. We wanted it made here. The mill operators said, "We want an exempt list."

(Testimony of David H. Ryan.)

I recall the testimony of a labor man, characterizing the exempt list as long as your arm, words to that effect. The mill operators wanted an exempt list in order that they might be able to bring in material they could buy more cheaply and they did bring it in.

The millmen were speaking of material, no material shall be brought in or worked on that has had any operation on it; rough lumber, for instance the frame of the building, joists, studdings and rafters are sawed out to size in the original saw [701] mill. Later on they are run through to size into joists, and a lot of those operations are performed up there to save freight rates. Up to 1920 it used to be work done here in San Francisco, came in rough and sized here. We had to get the rough lumber in here; that is self-evident.

The mill owners accused the Conference Committee that they were permitting their membership of the union to work for non-union mills at less than what they were paying. I can't recall, but I think they said they wouldn't work anywhere in shops or mills unless they agreed to pay this scale. They wouldn't work in any unless the same scale was paid in this district, they wouldn't go out and work for less money. It was a uniform scale throughout the area.

The basic purpose, if a group of mill owners agreed to pay a certain classification of labor so much wages, they wanted it understood they would

(Testimony of David H. Ryan.)

not go out and work for somebody not a party to the agreement for a dollar a day less.

By the first of January, 1937, I would just guess, probably a good part of the mills in San Francisco were unionized. That was 1935 that I testified very few of them were unionized. When we went in to negotiate that agreement in 1935, we never had any union shop agreement since 1921. Up to January 21, 1936, it would only be a guess, but the majority of them by that time were organized, I think. In 1938, practically all of them were organized. That would be the cabinet shops as well as the mills.

After the agreements are approved by the Local Unions they go before the council and they are then approved. The council don't approve the agreements unless the unions and the members have first approved them. Once they are approved by the council they become a part of the labor working conditions that the District Council undertakes to enforce [702] and to make generally recognized have the approval of the District Council as a Council; but the affiliated local unions elect their own business agents. The business agents under the law are supposed to work under the direction of the Council, but they are elected by the unions. They are supposed to work out of the office of the District Council. The business agents in the field do a lot of work. They settle nine out of every ten disputes that come up, very few of them land in the Coun-

(Testimony of David H. Ryan.)

cil. The law is that the business agents are supposed to work under my supervision and out of my office. The locals pay their salary.

Government's Exhibit No. 174 is a letter dated June 21, 1937, signed by me. It is addressed to planing mills and lumber dealers in Alameda County directly, and it says: "There is being brought into Alameda County doors, sash and trim that should be made in the San Francisco Bay District, in accordance with the terms of our existing agreement with the East Bay Planing Mill Owners and other firms in Alameda County." That refers to Section 16 of the 1936 contract.

The complaint was lodged, as I recall it, that after signing the agreement they were still bringing in non-union doors and stuff and running them through and putting them out as union-made products. Under the terms of the agreement referred to there they had to make them in San Francisco or, if it was on the exempt list, they could bring it in. There was other stuff there that should not be—they brought in special made doors for one thing. Special made doors refer to stock in there. They were bringing in special made doors that were not exempt. It was stock doors that were exempt.

They are manufactured for stock, and sometimes an architect gets an idea he wants a different form of mold or something like that and puts some special design on it and it then becomes a special door. Special doors were coming in and I [703] had some

(Testimony of David H. Ryan.)

complaint, that is one of the reasons I wrote out the letter. Complaints came into the office of the Council and I sent that out on my own knowledge. I couldn't say that that is so, but I get those reports from business agents. We sent them to the mills that we know, the business agents know where the mills are. He can give you a list of all the mills, whether they are in the telephone book or not. We try to get it to everybody. He would sort of broadcast it so everybody would know about it.

Exhibit 174 was addressed to lumber dealers and lumber yards that had agreements with us, they had some machinery in there and big saws. They were big yards like Loop Lumber Company. I can't recall who it was sent to, but we tried to cover everybody so as to find out about it, regardless of whether they had a planing mill or saw mil.

"Q. You wanted them to know about it?"

"A. And whether they had an agreement, or not."

In 1938 we had to place an Arbitrator on the wage scale. I believe the instruction to the Arbitrator was wages and hours. We were asking for shorter hours but were not expecting to get it. I believe Section 2 is Section 8 of the arbitration award. I think Section 8 and Section 2 dealt with the same matter and are identical.

Exhibit No. 132 is the agreement in effect after the award, and Section 17 is the exempt list under this agreement. Section 2 in the agreement, as it

(Testimony of David H. Ryan.)

was drawn up after the award, quotes almost verbatim Section 8 of the award.

I don't recall what was said in the negotiations right after the award, the only controversy at that time was about that \$9.00 scale, whether it was going to be paid or not.

The last part of Section 8 was practically Section 2 in the Agreement, "That the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is [704] or shall be working contrary to the conditions of said agreement"—as to that particular clause Mr. William Hutcheson came out here, and I met him, and he said, "What does that mean," words to that effect, and I tried to explain, and he said, "It says any material that comes from any mill. Are you proposing to keep out of here union-made millwork because it is not made at the same wage scale?" And I said, "No, that is not the intention." "Well," he says, "nobody is going to interpret it that way", just in those few words. That was up in the St. Francis Hotel. I said, "Everybody to the best of my recollection around here knows, the planing mill owners and cabinet manufacturers, that union-made stamped cabinet work and mill work will be installed if it reaches the job, it will be installed."

If it comes in here all fabricated, the only time we would see it would be on the job, we would never see it until it gets on the job. Our agreement

(Testimony of David H. Ryan.)

was to install it. There is not anything happens before it gets on the job under this agreement as far as we are concerned. If somebody brings union millwork in here, or union cabinet work, we won't see it if it is fabricated, it won't go to the cabinet shop, it will land out on the job.

Mr. Hutcheson asked what was meant and I told him, that don't mean to keep out union-made material. He said, in effect, "That is what they will say you are doing."

Section 17 in the same agreement is the same thing, it is the same language, that refers to material coming into saw mills. He objected to that. I don't know what he said about it, but he said anyway it was out. He was the boss and that settled it.

December 19, 1938, Paragraph 17 was changed by mutual agreement to read as follows: [705]

"In the interest of providing productive employment, it is agreed that no material will be purchased from; and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or employers of members of the United Brotherhood of Carpenters and Joiners of America."

*That is the wording of the October 18th amendment. That finally was wound up in some kind of agreement arrived at in October, I believe it was, I forget now. In October I was not on the

(Testimony of David H. Ryan.)

job. That language was signed to meet the General Office's objection to the language that was in the other agreement. Our definition of the General Office's definition of union condition in the fabrication of cabinet work and mill work is that they not only agree to employ members of our organization, but they have to have the wage scale that the General Office recognizes as a fair scale, and when they issue the stamp to them then they are manufactured under union conditions. If they have not got the stamp that is not a union condition. We have agreements, not here, but agreements are entered into with planing mills and cabinet shops in various places where they agree to employ none but members of our organization, but the wage scale in some instances is so low that the General Office won't grant them a stamp. The wage rate is one of the conditions of granting a stamp. The general policy of 75 cents per hour is the minimum although the General Office has authority to modify that up and down, in their judgment.

Those words, "Any material that has been made under conditions unfair to members of the United Brotherhood" would include the stamp and the wage both, that is as far as union-made goods. The next clause, "or employers of members of the United Brotherhood" I would assume is the Mill Owners, is what they meant. I did not participate in drawing that one up. I [706] was in the hospital. I have read that, but I would rather have somebody inter-

(Testimony of David H. Ryan.)

pret it who helped to draw it. I don't recall attending any meeting where they discussed this clause subsequent to the time I recovered from the illness. I attended a meeting before October 1, I believe. I recall November 12, 1938, attending a conference committee of Local 42, 262, 550 and 1956. My recollection is they discussed those matters. I think I attended a conference before the end of the year, at which mill operators or their agents were present. I cannot recall what was said regarding paragraph 17. I recall writing a letter to General President Hutcheson, proposing some new form after everybody said everything they had to say about it, but I can't recall the date or what was said there.

I went to Indianapolis in September, I got there one day and left the next, around the 13th, 14th or 15th of September. Mr. Hutcheson came out here after that. I remember when Mr. Hutcheson was in the St. Francis Hotel and Mr. Muir and Mr. Cambiano, and I think Messrs. Ennes and Gaetjen were there.

There were meetings after I came back in November or December, because I wrote a letter to Hutcheson sometime early in December, 1938, putting in all of the various items these meetings had arrived at and submitted it to him as a form of agreement. After they had signed this agreement to pay \$8.50 it seemed to be so vague, nobody could agree on what they had agreed to do, and

(Testimony of David H. ~~San~~.)

there were all kinds of discussions on it, and, finally it was drawn up in shape and I wrote a letter, but I had at least one meeting with the representatives of planing mills and cabinet shops; I know before the writing of the letter, and then I wrote the letter back to Hutcheson, and he finally approved it. This was around, I think, December, 1938. I wrote to him what they had agreed to and they had agreed to take \$8.50; there was so much brought about verbally nobody had the same [707] recollection of it. I got it up in that shape and sent it back and asked him to approve it. He did after a while, probably just before Christmas.

Prior to October 1st we had agreed with the Cabinet Manufacturers and Planing Mill Owners in San Francisco we would remove our men from any plant in Oakland that was not paying \$9.00 as of October 1. We removed men from the plants on October 1, and following that Hutcheson was here and around the middle of October they entered into an agreement to pay \$8.50 in six counties. Mr. William L. Hutcheson was here. I don't think Mr. M. A. Hutcheson was here at that time. Mr. William L. Hutcheson came, I think, a little before October 1, 1938, I am not sure. He left, I think, around the middle of October. I cannot recall if he was here in 1937; I am sure he was in San Francisco sometime in that two year period from 1938 to 1936, but I cannot recall definitely when. I do not recall him here in 1936 with regard to the wage contract.

(Testimony of David H. Ryan.)

Pacific Manufacturing Company were unionized and had the label since May 6, 1936. Any materials that came in here with the Union Label would be installed or worked on. I don't recall that in September, 1938, I refused to install or work upon material from Pacific Manufacturing Company; I do not deny it.

After the \$9.00 scale was entered into I went to the General Office in September, 1938, and spoke of the situation that was going to arise with the \$9.00 scale in San Francisco and \$8.00 scale in Pacific Manufacturing Company in Santa Clara, and General Hutcheson said, "Well, that is one big metropolitan district. I think that \$9.00 should be paid in Santa Clara if they are going to ship stuff in here," but when he got out here there was so much turmoil, and Edwards was not paying it, and the P. M. Company took advantage of that, [708] they still had the \$8.00 scale, and they went over to the Exposition Company and grabbed a lot of contracts for a lot of fine work over there, and got away with it, when the other fellows were fighting over what the wage scale was going to be. There was some trouble over it, but I can't recall. They still had the \$8.00 wage, the award was \$9.00 and they came in and got a lot of work with \$8.00, and finished it, too. I don't know whether any of it was tied up, if it was, it was not serious because it had a Label, but because something was alleged to be wrong with the wage scale. If they

(Testimony of David H. Ryan.)

paid \$9.00 they would not object to it, but they felt Hutcheson had made some kind of a ruling that there should be a uniform wage scale, and so far as it had not been made uniform, and that was the trouble.

Mr. Hutcheson expressed the opinion that this was a big metropolitan area and that the scale should be uniform, and I think that is one thing that influenced him to urge upon millmen and cabinet shop men to take \$8.50 instead of \$9.00 in order to get Pacific Manufacturing Company up to that scale, that is actually what happened, but in the interim a lot of disputes arose around here, I can't remember half of them, they were always arguing about something. I don't remember stopping any of their material. It would not be for that reason, it would be something else connected with it, because we had signed a union agreement with them dated May 6, 1936, and had had no trouble at all. If there was some dispute about it they were not complying with the wage scale. I cannot recall stopping it. I won't say it was not stopped by somebody.

I want to make clear that a business agent has authority to go out; if he thinks the agreement is being violated he will say something, "You had better stop this," or something, and I would not know anything about it until somebody lodged a complaint. [709]

The theory is that they work under me. Or-

(Testimony of David H. Ry...

ordinarily they would report back to me they were stopping material. As a matter of fact if you asked me that question it is not the practice to stop the material, we have not a signed Union Agreement to stop them from doing that. I don't know that it was stopped. You asked me the question was it stopped and I said I did not recall. The business agent, whoever he was, never told me about it until Harry Hilp told me about it. I never heard about it until then.

Al Edwards came in and told me about the Yates Company. I cannot remember any other that Al told me about.

I told Mr. Roos that I ~~had~~ heard Grand Rapids get part of the job, or words to that effect. I had a conversation with Mr. Roos before hand. I learned, of course it was evident to everyone, that he was doing quite a bit of remodeling and alteration job, and Brother Edwards knew he was going to put that work in there. All these local employers would probably find out about it. Mr. Ennes knew it, too, it was common knowledge.

I went down to Al Williams. The business agent found Walter Jacoby and his men down in the basement, as I recall it, and he said he had a couple of non-union men, they were getting ready to put in some Grand Rapids fixtures, and I called that to the attention of Al Williams. The business agent got that information, as I recall it, from the men working there for Walter Jacoby.

(Testimony of David H. Ryan.)

My objection was to Walter Jacoby on non-union men. He was always hiring non-union men or something like that. My objection to Mr. Roos was not, it was out-of-state material, but he should buy it in San Francisco. This was out of the city, yes. I was not objecting to the material.

Jacoby had at that time a little bit of shack out on Mission Road, Daly City, maybe 15 by 20 or 30; I don't think [710] Jacoby hired over two or three men, and he used to keep that place locked up and a big dog in there to keep the business agents out. He would hire non-union men if we would not catch up with him; if we did he lived up to it. He had a label of a couple of unions in 1939 and 1940; the Walter Manufacturing Company, and then he moved down to Redwood City and they had trouble with him. He was unionized by two unions, ostensibly.

I kept after Mr. Williams, "Who is going to do the rest of this work, is it going to be done in San Francisco, or who is going to do it?" He said, "How about the Grand Rapids stuff?" I said the Grand Rapids stuff was all right, but how about Jacoby, get him out of there and put some union men in. We talked around there for an hour or two. I wanted to get the statement of Al Williams that all of the rest would be let in San Francisco, and, finally, I don't know whether it was Al's idea or whose idea it was, he said if we would install Grand Rapids fixtures he would agree to let

(Testimony of David H. Ryan.)

us install them with union men, we didn't care whether Jacoby did, we wanted it understood that if he got non-union men in there we would get them off; we would install the Grand Rapids fixtures, and he would see to it that all of the rest of the work was let in San Francisco. I said, "That is fine." Emanuel had some of the work, Mullen, Ostlund & Johnson, I can't recall any more, three or four.

After I got out of the hospital I recall we held a conference with the representatives of Employers and Labor, sometime prior to December. I wrote a letter early in December after we had had a conference just prior to that. I can not recall any particular section they discussed. While I had been away from the office the representatives of the General Office and my people had gotten together on this \$8.50 scale and what they had agreed to and what was understood was something [711] I was trying to find out to whip it into a letter to send on to the general office, an agreement to send to the general office for approval.

Undoubtedly Section 2 was mentioned or talked about in the conference had preceding December 3, 1938, I can't recall that. I don't know who, if anyone, insisted on it being incorporated in the contract. I know that President Hutcheson, way back in July, insisted that it would have to be clarified, go out and be rewritten. Whether that final language was what Hutcheson desired or whether it

(Testimony of David H. Ryan.)

was a compromise between our representatives and the Planing Mill Owners and Cabinet people, I cannot recall at this date, just who insisted on it and who did not.

I cannot state which side between the unions and employers insisted that section 2 remain in. Originally we wanted it in there and explained that if they went outside the shops to get material and manufactured union-made goods, that they should comply with those provisions, that was the original idea, but it was rewritten after president Hutcheson said you could put any interpretation on it, everyone could interpret it to suit his purpose.

“Q. You testified yesterday the original idea was you did not think Mr. Edwards was going to go through with the arbitration and abide by it.

“A. I mean, Mr. Clark, originally, 1936, when it was first written, that no material should be purchased or worked on——”

Section 2, in the arbitration award it is Section 8, was discussed in the arbitration award in Judge Walter Perry Johnson's office by the Board. I told you about the arbitration proceedings and the \$9 that was established, and I made the suggestion then, something along that line, that I was interested in seeing the \$9 scale paid, and then the arbitrator told us to get together and submit something. Then it was brought up by us and submitted. Then after a time elapsed and I got back on

(Testimony of David H. Ryan.)

the job and noticed these had been rewritten, that [712] one was there, too, but I cannot recall just who all participated in those changes. They held meetings when I was not [713] there.

Section 2 was eliminated. This one, No. 8, was substituted for it, carrying in part the same language as I recall it now. I was insisting on it being in there at the start. I cannot recall what happened in November. We had a meeting. I cannot recall at this date just who said what. It was supposed to be a lot of preliminary work done when we got together in the meeting to get the thing drawn up along the lines that the general office would agree to, and that was what evolved out of that conversation. I won't be definite on it at the present time, whether the employers insisted that that remain in or whether the union men did. My recollection at this date is too vague to testify under oath on those things. After all it was drawn up and as I read it section by section that was what had been agreed to in conference. Some of the conferences had been held before I was present.

I testified I had meetings with Mr. Williams. My testimony, "I want to state, before you ask me with reference to the testimony given there, that at no time, to Mr. Al Williams, or Mr. McCreedy, or Mr. Smith did I ever say that we would not install the union-made fixtures with the label of the Brotherhood on them; at no time," is true. I

(Testimony of David H. Ryan.)

never told Mr. Williams I would not install Grand Rapids fixtures or Mr. McCreedy or Mr. Smith. I was present when Mr. Williams testified. His testimony, "What did Mr. Ryan say?" Mr. Williams answered: "Mr. Ryan said the union could not install these fixtures in San Francisco due to the fact that they had been made outside on a low wage scale." Then I asked: "Did he tell you then they would not install the fixtures?" And Mr. Williams answered: "Yes," is definitely, indisputably, not true. I did not state that to him or anybody else.

I can recall one conference with Mr. McCreedy in May [714] of 1938, 1939, at the Sir Francis Drake Hotel. He testified he had one or two with me; that may be so, I don't recall it; I won't deny that, I probably did. I recall one at the Sir Francis Drake Hotel one morning, went up into the mezzanine floor, he wanted to discuss Grand Rapids Fixtures.

"Q. You remember that yesterday you testified on page 1565 on being questioned by your counsel as to whether Mr. McCreedy and you had the following conversation, he quoted Mr. Burdell's question to Mr. McCreedy:

"Q. That is what you said to Mr. Ryan?" Then Mr. McCreedy answered Mr. Burdell by saying: "That is what I said to Mr. Ryan. Mr. Ryan told me, as I recall it, that they could not do that because our labor rate that we paid in Portland was about on the same basis as the labor rate here, and

(Testimony of David H. Ryan.)

that unless our rate was the same they could not work with us on it. And I asked him at that time if we could not work out some arrangement whereby we could pay the San Francisco rate on such work as we shipped into this town, and he said he did not think they would stand for that.

"Did you say that to Mr. McCreedy?"

"A. No, I did not."

I did not tell Mr. McCreedy I could not install those fixtures because they were manufactured at a lower rate than the San Francisco rate. I don't recall all the conversation, but I did not at any time tell anyone that. I never at any time told anyone I would not install fixtures with the Union Label even though they were manufactured at a lower wage rate. I think Mr. Smith was present when Mr. McCreedy had his first meeting with me. I remember Mr. Smith's testimony, I recall he said something to the effect I made the statement we would not install the Grand Rapids fixtures. I did not tell Mr. McCreedy or Mr. Smith in that conversation that an understanding [715] was entered into or an agreement was entered into whereby the local employers agreed to a wage scale which was satisfactory to the unions provided the unions would protect them on outside competition. I have never made the statement to anyone, anywhere, that we would not install union-made fixtures bearing the label of the Brotherhood. If I may explain that to you, I have taken an obligation, and if William

(Testimony of David H. Ryan.)

Hutcheson, president of the Brotherhood of Carpenters, knew that I made that statement he could remove me from office and very likely he would. That is why I am definite in saying that I never said that to anyone..

I don't recall Mr. Hosken, undoubtedly he was there. He is a Grand Rapids man. I did not tell Mr. Hosken the situation was just the same, we would not allow the men to install any of our equipment that had a lower wage scale than that which was prevailing in San Francisco. I think I testified yesterday I did not even recall the Weinstein job; I don't recall it now. I never at any time told anyone that we would refuse to install union-made fixtures made under union conditions.

I know Mr. Bernhardt very well. I did not hear such a statement made at the end of the negotiations that we had overcome all our difficulties up to now, and while it was not specifically put in the agreement that it would be understood that we would have no further trouble with, or trouble with any of the stuff from the North. Mr. Bernhardt, I believe, testified he heard it made. I say I cannot, I don't recall that statement. I recall the meeting.

"Q. Is it your testimony a statement like that was not made?

"A. No, I was not."

I say I don't recall it. Any conference of that kind everybody talks and at the same time, two or three of them talking, and there are a lot of things said which you don't recall who mentioned it. [716]

(Testimony of David H. Ryan.)

There was no oral agreement of any kind with any organization and Bay Counties District Council of Carpenters during the period of 1936 to 1940. Section 2 in the 1936 agreement, so far as I can recall it, said, "It is agreed by both Cabinet shops and Planing mills and representatives of the Brotherhood of Carpenters that no material will be purchased or work done thereon unless made under similar conditions and they should not buy any material made at a lower wage rate." That is the written agreement of 1936, referred to here so often, that the Cabinet Manufacturers and Planing Mill Owners agreed they would not buy material that would not be purchased or work done thereon that was made at a lower wage scale or under different working conditions; that was material they were proposing to bring in to make union-made stuff out of. That agreement we signed.

This agreement, article 2, says, that the cabinet manufacturers and planing mill owners agreed that no material will be bought or work done thereon that required our men to do work thereon, that was made under conditions of a lower wage scale or different conditions, and those are closed shop, union conditions, if they had to have material to complete their cabinet manufacturing or millwork and put a label on it, they would get some that had a label on it before they took it into the shops. They could bring it in from the mill down the street, around the corner; that was the written agreement.

(Testimony of David H. Ryan.)

It had no connection at all with installation of work or any other contractors associations, just those groups and no one else.

“Mr. Clark: Q. You say they might have got it just around the corner. Did the same agreement cover material that came from Oregon and San Diego and Vancouver and everywhere?”

“A. If the cabinet manufacturers were going to buy material, they agreed if they were going to buy those materials to supplement their work and bring them in, there was a stipula- [717] tion—you see, they had been buying it in this district from non-union mills, bringing it in and putting the stamp on it and calling it union material and sending it out under that assumption. There was no argument in there about the Northwest or the Deep South or the East or any place else which they agreed not to handle, but all the argument and dispute was about what was happening right in this district after fourteen years of open shop.”

One mill located here buying from another mill located here and that the men who signed the Union Agreement were going out and buying non-union lumber and bringing it in and making us put a stamp on it. That is what the complaint was. After fourteen years of open shop this District here was loaded up with all kinds of non-union material.

I think I testified that a majority of the mills on September 21, 1936, were unionized. In 1935 and 1936 we were carrying on an organizing campaign

(Testimony of David H. Ryan.)

and we had a big group of planing mills and cabinet shops organized with the label, but outside of that group, especially in Alameda County where there was not any Union agreement, there was a great group of planing mills and cabinet shops paying less than the scale, operating open shop, non-union.

Representatives of the Millmen's Union came to the Union time and again saying that they were not playing the game on the level, they were going around in the district and bringing the stuff in. I don't recall anything mentioned from the North, or East or South or West, so far as that goes they were getting stuff here. That was what was going on in the neighborhood.

I don't think I testified that every mill and cabinet shop was unionized in 1938, I think they were practically all organized. I don't know what I testified to this morning, but they were well organized.

[718]

We put section 17, the restrictive clause and exempt list in the contract of 1938 because there were non-union mills in Contra Costa County. I wouldn't make an estimate on how many were there in 1938, I would not say. Why not leave it in there, even if they were all organized, why not leave it in [719] there as long as they had agreed to it? Why take it out? It stayed in there until President Hutcheson said it was out, and then it was out.

You can organize local men one hundred per cent and leave them alone for a month and some of them

(Testimony of David H. Ryan.)

will be wrong, they cannot stay static. You organize them and they enter an agreement. It is a continual process. You can get union shops today, organize them to use the stamp, and it wouldn't be the same a month from now if you leave them alone. Nobody can be definite about a statement like that, whether it be eight, nine, ten, or nineteen, and that's the truth.

The only agreement is the written agreement I testified to before. There never was, to my recollection and as far as I am concerned, I never entered into an oral agreement; and the only written agreement has been the one submitted and gone over, and there is no other written agreement to my knowledge. There is not any agreement or understanding between the Bay Counties District Council of Carpenters and the other defendants in this case under the terms of which ~~no~~ millwork and patterned lumber will be purchased or worked upon that is manufactured at a lower wage scale regardless of where it is manufactured. There was not to my recollection any such agreement or understanding at any time during the period of 1936 to 1940.

Exhibit No. 2 is the Bay Counties District Council of Carpenters' By-Laws, I am familiar with all of that. I did not write those up. The original was written years and years ago and it has been amended from time to time for the last forty years, to my knowledge. Those are the official By-Laws.

It is true that on Page 29 of such Exhibit, Article 2, section 1 states:

(Testimony of David H. Ryan.)

"It is agreed by the District Council that, in conformity [720] with the agreement between the Mill Owners and Mill Men, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or are paying less than the wage scale hereinbefore quoted, or employing other than union mechanics.

"Section 2. In any shop not entitled to the use of our stamp the members working in that shop shall not be allowed to install its products on the job for which they are manufactured. For violation of this section a member shall be fined.

"Section 3. These conditions shall apply not only to mills within the City and County of San Francisco, but to all mills in the State of California, as well as those of all other states."

I testified that my obligation to the Union required me to respect the label of the Brotherhood and that it is my policy and that of the organization that the material that bears the label must be installed. In some cases material that does not bear the label we have a right under our policy to refuse to work on or refuse to install. We have agreements with all General Contractors and all Home Builders on installation work that we will not refuse to install any kind of material, with or without the label. That is an agreement between the District Council of Carpenters and the Asso-

(Testimony of David H. Ryan.)

ciated General Contractors and the Home Builders, etc. The contractors or home builders had an agreement with them, that they could go out and refuse to install non-union made millwork if they thought it advisable to do so, but if any of them has any contract or agreement we could not.

Under the general policy, the great bulk or practically all installation work, meaning millwork and cabinet work, trim going into a commercial building, manufacturing establishments, [721] residential construction, and under the terms of this agreement if they were to bring in non-union millwork we have to install it, but as a matter of fact ninety per cent of it is union-made here. If it gets on the job, we have to put it up, under the terms of our agreement. That is what we call no stoppage of work, with reference to general contractors and home builders, hardwood floor contractors and all of those.

We do not see it before it reaches the job. If it is fabricated and patterned millwork or cabinet work made in the district, then the millmen see it, but the men that put it up on the job do not see it until it lands on the job.

The business agent of the millmen goes through the shops and yards; but with a mill owner's plant and cabinet manufacturer's plant that is done by the Millmen. I knew about that, they reported it to me, that is their job. If a home builder goes out and brings in a carload of non-union material, we go out and talk to him to get it here, we are con-

(Testimony of David H. Ryan.)

cerned with getting it in San Francisco, but we install it once it gets on the job. When it lands there and the men install it the journeymen, carpenters and foremen do not see it until it lands there.

My organization is composed of delegates from the carpenters unions of four counties, San Francisco, San Mateo, Alameda and Marin. All of those unions have delegates to the Council, and they compose the Council, that includes the millmen.

The millmen fabricate patterned millwork and cabinet work, operate high speed woodwork machinery, work on benches. They do it in shops and they make this millwork in the mills. The carpenters put up the buildings and install that work when they get up to it. There is no difference in skill between carpenters and millmen, but there is a \$2.50 a day difference in wages right now. The outside carpenters are [722] getting the most. That is what all the dispute is about now. The \$8.50 scale we have heard talked about that was established in a compromise is still in effect in this district and the carpenters in the meantime have gone up from \$10.00, which was their scale in 1938, to \$11.00 now, making \$2.50 differential.

Mill operators do not employ carpenters as a matter of common practice. Cabinet Manufacturers, I think, put carpenters on their fixture work. Cabinet Manufacturers take a contract, it is a different type of business. Mill Owners operate planing mills, turning out stock, and special designed work

(Testimony of David H. Ryan.)

and patterned millwork. They sub-contract their work from the general contractors and home-builders to supply so much trim for so many bungalows, and they deliver it on the job and are through with it. Cabinet Manufacturers, that is Commercial Fixture and Store-Front Institute, go out in the business center occupied by commercial houses or where they want to alter premises and make a sketch and estimates for installation of fixtures, etc. They have to be designed to fit the size of the store space, for the display of merchandise or for a special line of merchandise that that commercial man is handling, they have to be made of special design complying with particular requirements, so they contract the whole thing, including electrical wiring, painting, decorating, and what-not. So on installation they employ outside carpenters to install the fixtures.

Under the contract between the General Contractors, Home Builders and Cabinet Manufacturers, as far as the carpenter is concerned it contains this no-stoppage-of-work clause. I do not think the Millmen contracts have any such provision as that. That means once material gets on the job we will install it. I want to modify my reply, I am not sure but what there is some stipulation in the Mill Agreement that there will be no stoppage of work. It is not clear in my mind. [723] I won't answer definitely unless I can see it. It is definitely in all of the others.

(Testimony of David H. Ryan.)

I testified that neither I nor the Council had any agreement that would bar installation of any fixtures in San Francisco that were manufactured outside of San Francisco at a lower wage scale. We have no such agreement definitely. I am certain we had no such agreement between September, 1936, and June 26, 1940. I don't recall if I ever wrote or told anyone we had such an agreement. I have seen a letter, Exhibit 115, but I have never seen the one I wrote. This is a letter from Cook County, Illinois, District Council of Carpenters, addressed to me under date of June 7, 1937, in which he refers to my telling him how we were doing work here, and he wanted to know how we were going to get away from the Interstate Commerce Commission. I would like to see the letter I wrote.

I got the girl to take out everything from the file, and carried them down to my attorney. I said, "Where is that letter I wrote," and they said, "It is gone." I received that letter from Mr. Sand, to the best of my recollection, because it is in my file.

Thereupon the letter was introduced in evidence over the objection that it relates to a contract with the contractors, not a contract with the millmen. The Exhibit was not offered against the Cabinet men on trial, and was marked "Government's Exhibit 183", and was read as follows:

"Ladies and Gentlemen of the Jury, this is a letter on the letterhead of the United Brotherhood of Carpenters and Joiners of America, Cook County,

(Testimony of David H. Ryan.)

Illinois, Offices Third Floor District Council Building, 12 East Erie Street, Chicago, and it is dated June 7, 1937.

“Mr. D. H. Ryan, Secretary,
Bay Counties Council,
Building Trades Temple,
San Francisco, Cal. [724]

“Dear Sir and Brother:

“Replying to your letter of the 1st inst., I wish to advise that the Walgreen Company does not manufacture their own fixtures. They have been letting such work mostly to the Kaszab Company of this City, which company operates a union shop and have the union label.

“The Millmens scale here at present is ninety cents per hour. A new agreement has recently been signed with the Millwork and Cabinet Manufacturers Association. This agreement becomes effective July 1st, 1937 and runs to May 31st, 1938. The minimum wage scale provided for in this agreement is \$1.05 per hour. Time and one half for overtime Monday through Friday, and Saturday from 8 A. M. to 12 o'clock noon. Double time for Saturday afternoon, Sundays and all legal holidays or days celebrated as such.

“I note with interest your statement that your agreement covering all shops and mills in your district makes it impossible for your men to install fixtures from outside made under a lower scale.

(Testimony of David H. Ryan.)

That in my opinion is an excellent means for protecting of home industry and if it can be applied without coming in conflict with the Interstate Commerce Law it should prove highly beneficial to copy from. I shall appreciate if you will send me a copy of your mill agreement.

“Fraternally yours,

CHAS. H. SAND,

Secretary”

“The Court: This question was for the purpose of impeachment, was it?

“Mr. Clark: Yes.

“The Court: The jury will understand, as in the case of the witness yesterday whose testimony was impeached, that this testimony affects only that of the witness who was on the stand.”

I testified neither I nor the Council had any policy [725] that would prevent importation of mill-work from the Northwest. We have an agreement with the San Francisco soft and hardwood lumber dealers covering the employment of lumber handlers and lumber clerks. There is nothing in regard to that in the agreement. We never attempted to make any such agreement with the lumber dealers with respect to the importation of material from the North.

Exhibit 115-40 is a carbon copy of a letter dated May 5, 1938, addressed to:

(Testimony of David H. Ryan.)

“Mr. M. A. Harris,
c/o Van Arsdale-Harris,
5th and Brannan Streets,
San Francisco, California.

“My dear Mr. Harris:

“The Bay Counties District Council of Carpenters would be very glad to have a meeting arranged with the soft wood wood lumber dealers in San Francisco to the end that we might be able to establish, by mutual agreement, a policy regarding the importation of lumber and millwork from the Northwest.

“We are addressing this request to you, knowing that the lumber dealers would respond to a request coming from you for such a meeting more readily than they would from any other lumber dealer in the City.

“If you are favorable to the proposition of such a meeting and feel that it can be arranged, we would like to have you get in touch with our office regarding the matter.”

“I had no idea you were talking about that, because this refers particularly to their agreement to refuse to import non-union lumber made by the CIO.

“Mr. Faulkner: All of this is offered by Mr. Clark as not in any way affecting—

“The Court: I understand it is offered for the purpose of impeachment.

“Mr. Clark: Yes. [726]

(Testimony of David H. Ryan.)

"The Court: And such testimony will affect only the credibility of the witness on the stand."

The letter doesn't mention the C.I.O. but our intention was to stop the non-union lumber manufactured by the C.I.O. That agreement was entered into along that line. It didn't refer to millwork, it referred to—well, there might be some other—my letter says millwork.

"Q. You testified, did you not, that there was no agreement preventing the installation in the San Francisco Bay Area of any material or cabinets, show cases or store fixtures that were not manufactured under conditions complying with the conditions in this area? A. Any agreement to keep those out?"

"Q. Yes. A. Union-made?"

"Q. Yes, any kind. A. No such agreement."

I testified I didn't know of any such agreement of the District Council of Carpenters. I also testified the Cabinet Manufacturers employed millmen, members of 42 and 550, and they also employed carpenters.

The Cabinet Manufacturers, to the best of my recollection, have not signed the Carpenters' agreement entered into May 1, 1941. It is customary for the Cabinet Manufacturers when the new wage scale is set up for the construction work to sign an agreement that they will comply on the construction end of it the same scale paid by the General

(Testimony of David H. Ryan.)

Contractors; they haven't signed up that agreement, but they are complying with it. I think we had such an agreement in 1937, 1938. They were blanket agreements negotiated with the very large groups; the present five year agreement was negotiated between Bay Counties District Council of Carpenters and the Associated General Contractors of Central California. They all sat in as a group.

Representing the Cabinet Manufacturers, Mr. Ennes was one; a group representing Central California Chapter of [727] Contractors, East Bay Contractors, Marin County Contractors, San Mateo County Contractors, Associated Home Builders of San Francisco, General Contractors Association of San Francisco, seven groups, all negotiated the same agreement at the same time at which Commercial Fixture and Store Front Institute was represented by Mr. Ennes.

The agreement in 1936 was negotiated between A.G.C. and Home Builders and the contractors in the East Bay, and that run to around May, 1938. There was one until May, 1940, and I cannot recall all those conferences, who was present, but the last one everybody was in it.

I think in 1937 we had an agreement with the Cabinet Manufacturers for installation, I can't recall it. I don't recall anyone on those negotiations except Mr. Ennes. He was in on all of the negotiations. I don't recall if Mr. Mullen was there. I can't recall anybody but Mr. Ennes, he was there.

(Testimony of David H. Ryan.)

When it comes to negotiating agreements for installation made by Cabinet Manufacturers, they follow the scale set by the contractors, as a rule; they stipulate to that scale whatever it is, the same scale as the General Contractors, the same hours, rates for overtime, and so forth, and general working conditions.

I will repeat neither I or the Council had in 1936, from 1936 to 1940, any agreements, written or oral or otherwise, that prevented the installation of fixtures manufactured outside of the State or outside of the San Francisco Bay Area at a lower wage scale. We have had none during that period.

Exhibit 114-19 is an agreement between Cabinet Manufacturers Institute of Northern California, Northern Division, signed by J. G. Ennes, Bay Counties District Council of Carpenters signed by D. H. Ryan on the 6th day of May, 1938. I think that is the uptown agreement, covering manufacturers, between Cabinet Manufacturers Association and Bay Counties District [728] Council of Carpenters.

Thereupon, over the objection that it wasn't impeaching, a portion of the agreement was read as follows:

"Section 24 of this agreement, which appears at the bottom of page 3, is this:

" 'No carpenter under the jurisdiction of the Bay Counties [729] District Council of Carpenters shall work on the installation of commercial fixtures,

(Testimony of David H. Ryan.)

store fronts, or the structural work incident thereto, unless the contractor undertaking the work has subscribed as a member of an Employers Association or as a Contracting firm, to an Agreement comparable hereto.' "

I spoke of my obligation under the Constitution of the Brotherhood. Exhibit 31, page 23, Section E, reads as follows:

"Paragraph D: 'The jurisdiction of the District Council shall be as provided for by the Constitution and Laws of the United Brotherhood and named in their charter.'

"E District Councils shall have the power to enforce Working and Trade Rules in their respective localities; they cannot make arrangements to debar their members from working for contractors or bosses other than those connected with the Bosses' or Builders' Association.' "

Section 24 from Government's Exhibit 114, is part of the agreement. He could work for any of them nevertheless.

Cross-Examination

By Mr. Tobriner:

Building Trades Council of San Francisco in no way directly participated in the negotiations for either the 1936, the 1938 contracts. I would like to explain that answer because as has been developed in the evidence the conference committee set up between the San Francisco Building Trades

(Testimony of David H. Ryan.)

Employers Association and the San Francisco Building Trades Council selected the Arbitrator to settle the dispute in 1938. At the present time members of the Millmen's Locals and the Carpenter's Locals are members of the Building Trades Council. An agreement was made through the District Council of Carpenters which included the Millmen's Local 42 in San Francisco and came into the Building Trades Council. I participated in [730] working out that agreement when they joined in 1936, as I recall it. I have copies of the agreement. I don't think I have signed originals.

Exhibit CC for identification is a copy, which says: "The Bay Counties District Council of Carpenters proposes that the affiliation of carpenters with the Building Trades Councils in this district be in accordance with the following stipulations." That was accepted by Building Trades Council. They passed a resolution, accepted our affiliation with that list of stipulations covering our affiliation.

Thereupon the document was introduced in evidence as Defendants' Exhibit CC, and the following portion was read:

"The Bay Counties District Council of Carpenters proposes that the affiliation of the carpenters with the Building Trades Council in this district be in accordance with the following stipulations:—

(Testimony of David H. Ryan.)

"Then there are set up some nine stipulations. It is signed, as you will see, by the Bay Counties District Council of Carpenters, D. H. Ryan, Secretary.

"No. 3. That questions directly affecting the interests of the carpenters, such as strike votes, boycotts, trade movements, etc.; that the District Council will exercise its right to determine the action of its membership in the district."

"Then the following:

"No. 5. The carpenters' affiliation with a Building Trades Council will be based upon the recognition by that Council, of the laws, rules and regulations of the Brotherhood of Carpenters; our right to negotiate our own agreements, and that the removal of our members from a job, the levying of fines, or disciplinary action affecting them, will be subject to the approval of the District Council of Carpenters.'"

That agreement was approved, I think, the Fall of [731] 1936. The minutes of Thursday evening, October 1, 1936, showed the date of the action by the Building Trades Council. The documents would indicate the Carpenters' Unions were not members of Building Trades Council when the agreement of September 21, 1936 was signed. Building Trades Council did not participate in 1938 in either negotiation or arbitration, except that a committee composed of delegates to the Council, a joint committee selected the Arbitrator, and after the dispute

(Testimony of David H. Ryan.)

arose, this whole question was discussed referred to here. To that extent they participated. That was only about the wages on the East side of the Bay and this side of the Bay. There was no participation by Building Trades Council in drawing up clause 17, 8 or 7.

W. L. WILCOX,

called for the defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. McKevitt:

I first joined the Millmen's Union in 1921, in Sacramento. I started my career as a millman in Seattle in 1914. I worked in the furniture industry until 1917, spent four years in the Navy and resumed my trade thereafter. I belong to Local 42. I am at the present time the business representative. I was elected to that office in June, 1938, and served for one year; was elected President in 1939, and served for one year, and since that time was re-elected business agent in 1940, and have served ever since.

The duties of the business agent are to call on various shops and mills, check the count of the men employed, see that they belong to the Union, that their dues are paid, take applications if there are any to be had, call on the sick and injured, repre-

(Testimony of W. L. Wilcox.)

sent the injured before the Industrial [732] Accident Commission, settle any disputes that may arise on the jobs in regard to the agreement or working conditions, collect any monies that may be due, represent the membership before the Labor Commission, if there is a dispute in which employers are trying to chisel the men out of wages, make funeral arrangements for any members who have no relatives or heirs, assist relatives or heirs in making funeral arrangements, act in funeral ceremonies under the ritual of the Brotherhood, collect proper salaries and deal with the men who have been violating the terms of the agreement and their obligations as union men.

I see that apprentices attend regularly appointed trade schools as agreed upon by the bosses and the union, that the boys may become more proficient in their trade, as they have to attain a certain percentage of attendance at school, it is my duty to see they attend, get their proper wages when due, and see they are given the proper opportunity to learn their trade in the course of the work day on the machinery and tools, and not used as cheap laborers around the mill.

I was a signatory to the 1938 agreement. I was elected in June and installed in office in July, 1938. Prior to my installation as business agent negotiations concerning that agreement had been completed. I had no part in the negotiations. When I came into the picture the arbitration proceedings were

(Testimony of W. L. Wilcox.)

under way, and there were certain arbitrators handling the matter. I had nothing whatever to do with it. I signed in my capacity as business agent. I did participate in the division of monies that was reached when the scale was reduced from \$9.00 to \$8.50. My duties in that respect were in regard to the fact that the employers had contracts on hand before the new wage scale went into effect. If it had gone in right then it would have cost the employers more than they had figured on to produce the job, and they made claim for what [733] is called old work, and they were put there to complete their old work at the lower scale. They were to pay the new rate of pay; we held the check for the difference between the old and new scale, and turned it in to a committee that was set up for that purpose, and where the claims run over that we repaid it from the monies collected in that manner. I went with the auditor to audit the claims and to do my best to keep the claims of the employers down as low as possible.

I have heard my name mentioned relative to minutes that the Government read. Dougherty Lumber Company came into San Francisco between the first of the year and July, I believe, 1938. They operated here from that time until about a year or a year and a half ago, or shortly after the completion of the second Golden Gate International Exposition. Their mill was operating as a non-union mill. The recitals in which my name was mentioned refer to non-union material.

(Testimony of W. L. Wilcox.)

I know of no verbal, oral or written agreement, secret or otherwise, concerning these unions, either 42 or any other Millmen's Union that involves finished lumber or millwork, and coming its shipment into California from other states or anywhere out of this State.

"The Court: What was said in the minutes, Mr. McKevitt, so that the jury will understand what the testimony was. I want the jury to understand what it is about.

"Mr. McKevitt: This is under August 16, 1938, Meeting of the Millmen's Union No. 42. 'Business Agent Wilcox reported a car of T&G from Dougherty Lumber Company slipped by and had gone over to the Shoals.'

"Q. That is the same Dougherty Lumber Company you referred to?

"A. That is the same Dougherty Lumber Company." [734]

Cross-Examination

By Mr. Clark:

I was business agent on December 20, 1938. I believe I attended every meeting. My report then, "Plenty material coming into San Francisco, T&G flooring that is coming into San Francisco will be rerun in fair shop" was non-union material. I had some of it rerun. There was an operation actually performed on it, it was actually worked on.

I did not go out to Symon Bros. at any time. I believe I was present on November 28, 1939, when

(Testimony of W. L. Wilcox.)

Mr. Helbing reported about Symon Bros. in the meeting. I do not know who Symon Bros. purchased their material from. I was president of the Union December 12, 1939. I don't recall the report that Symon Bros. agreed to use local millwork and go along with the program.

"Q. It is not your testimony that that did not happen, that that report was not made?

"A. No."

I recall the report on January 16th that "250,000 feet of T.&G. for the Cow Palace coming from the North without the label." There was more non-union. There was a protest about it according to the report that we had on the floor. I can recall something of the report at a meeting of January 23, 1940, at which Mr. Kelly reported, "There is no exemption list and the mills are breaking down conditions by bringing in this material with the label." I can't recall exactly what was said, I would not swear to the date at which anything was said. When I was present the minutes of the preceding meeting were read and approved. I always asked the members if there were any errors or omissions or corrections to be made, and if I heard no objection I ordered the minutes approved as read.

The rerun material spoken about on December 20, 1938, might have been rerun either at the Empire Mills or at Windeler Pipe & Tank Company. The reports were Symon Bros. did not handle union materials during the period involved [735] here. I

(Testimony of W. L. Wilcox.)

did not know.

Material that was rerun was put through a sticker. A sticker is a machine that makes all of the picture mold, casing, anything of that nature.

As business manager my district does not extend to all counties in the Bay Area. My district at that time included San Mateo, San Francisco and Marin Counties. It now includes San Francisco and Marin Counties.

It was necessary to rerun for the use it was to be adapted to. They brought it down to equal thickness. It was run originally as green lumber. Green lumber as it dries will shrink, some will shrink more than others. Before it goes into a building it was all the same thickness and could be properly laid as flooring or roughing or whatever it was used for. The material was tongue and groove, 1½ by 6; it might be used either for flooring or roofing. It was green when it was run in the North in the non-union mills. After it had been laying in the yard in the sun some of it would shrink more than others, it would be various thicknesses. I do not know of any material rerun and no operation performed on it, nothing actually done to it. I do not know Mr. Yates of Buckley Door Company. I heard of people rerunning it. It always went through a machine. I could not testify whether there was anything done to benefit the lumber. I could only testify to those things which actually happened that I saw. It was not necessarily the purpose of re-

(Testimony of W. L. Wilcox.)

running it merely to get the local stamp on it; that was our main purpose. That was our purpose to rerun it so we could put the local stamp on it.

OTTO W. SAMMET,

called on behalf of the defendants, was duly sworn and testified as follows: [736]

Direct Examination

By Mr. Carson, II:

I am a member of Local 42 and have been since 1932. I am employed in a cabinet shop, Ostlund & Johnson; and have been since 1930. I was on committees of Local 42, but never held a paid position. I was on the Negotiating Committee of 1935 and 1936.

A contract of 1935, marked "Defendants' Exhibit N", is the contract I negotiated as a member of the Negotiating Committee. I believe a letter was sent to the various mills and cabinet shops in the San Francisco Bay Area setting out the position of labor with respect to its request to negotiate. Exhibit 2-D, dated April 29, 1935, is a copy of the original letter we sent out.

Thereupon Exhibit 2-D was introduced in evidence and read to the jury as follows:

"Gentlemen:

'As you know, representatives of our Union have met with representatives of your Association, from

(Testimony of Otto W. Sammet.)

time to time during the last two years, endeavoring to arrive at a mutually satisfactory agreement upon wages and working conditions for our members employed in the shops and mills in San Francisco.

"Since the year 1932 when a 20% reduction in wages was imposed on our members, we have worked for the low scale of 70 cents an hour in the hope that we would eventually be able to obtain a wage that would, at least, provide our members and their families with the bare necessities of life.

"In addition to a low wage scale and intermittent employment we have, during the last eighteen months, had to meet a constant increase in the cost of living, with all indications pointing to the conclusion that the trend toward higher prices will probably continue with the continued improvement in business [737] conditions, which is now well on its way.

"We have not failed to note that during the time we refer to, employers in other branches in the building industry have met the situation with advances in the wage scales of their employees.

"We do not refer especially to the employees engaged directly in building construction, although it is humiliating to our members to see hod carriers receiving \$1.10 per hour, cement finishers \$1.12½ per hour, reinforced iron men \$1.12½ per hour, electricians \$1.25 per hour, plasterers and lathers \$1.25 per hour, and bricklayers \$1.50 per hour, while skilled cabinet makers engaged in the fabrication of high class fixtures and millmen en-

(Testimony of Otto W. Sammet.)

gaged in the operation of high speed woodworking machinery are still being paid on a parity with unskilled common laborers.

"We refer more specifically to wage scales in shops whose competitive field is similar to yours. We note that in Sacramento and Fresno where the cost of living is substantially lower than in San Francisco, the scale is 87½ cents per hour in cabinet shops and planing mills.

"In the ornamental iron shops of San Francisco where the field of competition is practically the same as in our local shops and mills, the scale is 90 cents per hour. The collective bargaining agreement between the sheet metal contractors and the sheet metal workers' unions, which has been approved by their divisional code authority but not yet signed in Washington, sets the scale in the sheet metal shops at \$1.10 per hour.

"We recall the time when the wages of our members were comparable to the wages of other mechanics in the industry, and when our cabinet makers and millmen were recognized as being what they are—highly skilled men.

"We have endured the conditions confronting us with [738] fortitude and patience but the facts and circumstances have forced upon us the realization that we cannot, in justice to those dependent upon us for support, any longer acquiesce in the further postponement of this question.

"At a special called meeting of Local Union No. 42, on April 16th, the following action was taken:

(Testimony of Otto W. Sammet.)

"1. Wage scale 90 cents per hour.

"2. Five (5) days to constitute a week's work, from ~~Monday~~ to Friday, inclusive, between the hours from 8 A. M. to 5:00 P. M.

"3. All overtime to be double time.

"4. No work to be done on Saturdays between the hours of 12:00 Noon and 6:00 P. M.

"5. Use of the Union Stamp and Stewardship in the shops and Mills, being mutually beneficial, to be obligatory.

"6. The above rate of pay and working conditions to go into effect on June 1st, 1935, and to continue as long as the carpenters receive the same pay for equivalent hours of work. Should the carpenters at any time receive more pay and/or shorter working hours per day or per week, the same pay and hours and other working conditions of the carpenters shall at the time it goes into effect for them also take effect and apply to all cabinet shops and planing mills.

"We desire to say, in conclusion, that we will be glad to meet with representatives of your Association to discuss the matter with them.

Sincerely yours,

MILLMEN'S UNION NO. 42

.....: President

..... Secretary

"Approved by the District Council of Carpenters, April 17, 1935." [739]

(Testimony of Otto W. Sammet.)

Following the sending of that letter the Negotiating Committee, of which I was a member, arranged to meet the Negotiating Committee of the Employers. On that Committee was Kelly, Mr. Helbing and myself of 42, Mr. Ryan representing Bay District Council of Carpenters and Mr. Ennes representing Cabinet Manufacturers and Mill Owners, not at that time on both sides of the Bay.

We had to go on strike, we could not get along.

The contract, Defendants' Exhibit N, was supposed to run for one year and it had a provision that it could be either changed or modified by either party upon sixty days' notice by either party. I believe there was a notice pursuant to that clause by my Local Union in the early part of 1936, making certain demands for negotiations on a new contract.

I was on the Negotiating Committee in 1936 for Local 42. On the Committee was Mr. Kelly for 42. Mr. Dave Ryan representing Bay District Council of Carpenters, Mr. Ovenberg and Mr. O'Leary represented 550, Jack Hart and I believe, D. W. Edwards, represented the Mill Owners for both sides, and Mr. Ennes represented Cabinet Manufacturers. At that time there were representatives from both sides of the Bay. San Francisco and Alameda Counties were covered by the negotiations in 1936. The main object in 1936 was to raise our wages to a decent level because we had been cut from \$7.50 in 1930 to \$5.60 in 1932, and

(Testimony of Otto W. Sammet.)

we were trying to get our wages back to the original level and we also insisted on a closed shop in order to enforce our label and working conditions, and we tried to shorten working hours in order to put our fellow members on the pay roll because hundreds of them were walking the streets at that time.

These negotiations continued almost three months. The position of the employers relative to the demands of the [740] Union concerning all material bearing the Union Label was, they wanted to get anything that they felt like and they wanted to get it where they could get it and they wanted a free flow of material. When we were negotiating we wanted an absolute closed shop and they told us about the arrangement they had in 1917, that they could not understand what we wanted a one hundred per cent proposition now for because we were only half as well organized as we were in 1917. We finally agreed upon a very small exempt list. Paragraph 16 in Exhibit No. 131, which is the 1936 contract, is the clause that was arrived at in that contract as a result of the negotiations.

The employer group wanted to have whatever is given here on the exempt list. Representatives of the Cabinet Manufacturers were very anxious to have dowels come in and panels, veneer, and things of that kind. Those items are very much peculiar to the cabinet manufacturing business.

To my knowledge the local mills in San Fran-

(Testimony of Otto W. Sammet.)

cisco manufacture their own dowels, but the cabinet shops do not manufacture any dowels, and usually they come from the outside. They come different thicknesses and lengths. They have to buy them by the hundred.

The first part of paragraph 16 states substantially the position taken by the members of the Negotiating Committee for the Local Union. At that time we were just trying to organize and there were quite a number of shops still in town which were not organized, and they would bring them in at a lower standard of wages than they had in their shops, and the working conditions did not come up to the union shops standard, and consequently it was very unfair and hard to control, so we insisted no getting that in there.

The exempt list was not exactly a compromise. I, for my part, being in the cabinet business, conceded that they needed [741] the dowels and as long as we had no proposition to make them I had no objection to it. The last part of paragraph 16 was Mr. Ennes' idea. He insisted on getting it in there. We fought about it but he insisted on it and we let him have his way.

Exhibit 2-E, for identification, is a sample of a dowel referred to. It is one of the dowels regularly used in a cabinet shop. Those in the mills are smooth and have the grooves in the long way. They usually make them themselves in a machine.

Thereupon the dowel was introduced in evidence as "Defendants' Exhibit 2-E."

(Testimony of Otto W. Sammet.)

The grooves are in there to hold the glue, it makes a better appearance. They make them up to sixteen feet long and then cut them off as you need it in the mills.

I am a cabinet maker. Statement in the minutes of Local 42 purported to have been made by me to the effect that Edwards wanted an exempt list, we should not compromise, meant Mr. Edwards wanted everything exempt and we said it is getting longer all the time the longer we negotiate. That is D. N. Edwards from Oakland, Nat Edwards. He was a mill owner and represented the Mill Owners from the Oakland side.

I had no negotiations in connection with the 1938 contract. I didn't serve on any conference or negotiating committee after execution of the 1936 contract. I didn't serve at any time as business agent or officer of my Local Union. My only connection was as Negotiator on the 1935 contract and 1936 contract. During my membership in Local 42 and the year 1938, I entered into no agreement whatsoever, secret, oral or in writing, relative to the shipping into this area of millwork coming from States other than the State of California, with any employer group. I did not know of any such secret or oral agreement. I do not know of any agreements between Local Unions 42, 550, 1956, 262, the Bay Counties District Council and the [742] Employer Defendants in this case other than contracts which have been introduced in evidence and testified to.

(Testimony of Otto W. Sammet.)

Cross-Examination

By Mr. Todd:

I testified in the negotiations in 1936 leading up to the contract marked Exhibit 131, both sides of the Bay were represented, Unions as well as Operators. Alameda County Building Trades Council did not participate in these negotiations in any way whatsoever.

Cross-Examination

By Mr. Zirpoli:

Persons present that negotiated the 1936 contract were Messrs. Kelly, Ovenberg, O'Leary, Jack Hart, D. N. Edwards, and Ennes. I don't recall anybody else. I don't recall if Mr. Mullen was there. I don't believe Mr. Carl Warden was, or Mr. Emanuel. Mr. Warden might have appeared sometime, dropped in at meetings, but I wouldn't know the person.

The main object was the raising of wages and the insistence on the closed shop. Insistence on the closed shop was the only way we could protect our standing on wages. I tried to have all the people who worked in the mills and cabinet shops, members of either Local 42 or Local 550. That fight is still going on.

We started negotiations about May, 1936, concluded the contract in September. Question of the closed shop was continuously an object. Question of the closed shop was not conceded until the day they actually signed the agreement, that was just

(Testimony of Otto W. Sammet.)

about the size of it. I would say the issue of the closed shop was not definitely conceded until September. It might have been settled one day and the next day it was not settled. It wasn't really settled until the contract was [748] signed, to settle it definitely so far as the contract was concerned.

Most likely I attended a meeting of my Union on June 23, 1936. Mr. Helbing is a member, I think he was over there at the meetings with the Cabinet Manufacturers, for some time, but he had nothing to do with the final arrangements. It is possible I made a report to my own union on June 23, 1936. Most likely I did. If it appears in the minutes of June 23, 1936 that "Brother Sammet furthered B. A. Helbing's report on the meetings with the mill owners and cabinet manufacturers outlining in detail some of the issues discussed", it is correct.

I said the employers stated their position and they wanted a free flow of everything, regardless as to its source. I understand the dowels were made outside of this territory. The exempt list was the mill owners and Mr. Ennes' idea. I wouldn't recall what Mr. Ennes said in that regard, word for word. In substance he didn't want to be handicapped by anything so he wanted certain exemptions in there. Mr. Ennes talked about those dowels coming in and wanted to have a free flow of those dowels here in this territory, he didn't want to be handicapped. The reason he gave for the entire exempt list was something similar. Those

(Testimony of Otto W. Sammet.)

things lasted almost three months and we had one point settled one day and always tore it open after that a dozen times.

I answered I knew of no agreement, secret or oral, with any mill worker or cabinet manufacturer with relation to shipping of millwork from out of this State whether it bore a union stamp or not. I knew of the coming in of merchandise that was being stopped from out of the State only by hearsay. I had nothing to do with it personally. I didn't exactly hear such things at the union meetings. Once in a while you would hear a rumor, but I don't pay attention to rumors. [744]

I don't recall if I was appointed to meet with a committee of Millowners with relation to hot cargo. I don't recall any meeting with the owners at all. I might state at this time I was working hard and I was on every committee that existed, if I was present or not present. I had nothing whatever to do with the 1938 contract. I don't believe I was appointed on a committee in our group at the union meeting of January 18, 1938 to formulate plans for a new agreement. I couldn't say if I was present at the meeting on January 18, 1938. The minutes of January 18, 1938 look like I was named, but I don't recall that I served on that committee. I may have been there a few times but I won't deny it and I won't say yes.

My activities just about ended with the 1936 contract. I was thoroughly disgusted with it. After

(Testimony of Otto W. Sammet.)

that I took no activity. The reason was, mainly, because when those negotiations were going on we had to work all day and the negotiations went on at night and would last until twelve, one or two o'clock; the room was full of smoke; you could hardly see the next fellow, and I don't smoke so I had considerable headache the next day. [745]

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Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 686

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 687

THE RAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 688

LUMBER PRODUCTS ASSOCIATION, INC., ACME MANUFACTURING
CO., INC., EUREKA SASH, DOOR & MOULDING MILLS, ET AL.,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 689

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES
COUNCIL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 690

BOORMAN LUMBER COMPANY, HOGAN LUMBER COMPANY, LOOP
LUMBER & MILL COMPANY, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { NOVEMBER 11, 1944.
NOVEMBER 13, 1944.

CERTIORARI GRANTED JANUARY 2, 1945.

No. 10011

United States
Circuit Court of Appeals
For the Ninth Circuit.

LUMBER PRODUCTS ASSOCIATION, INC.,
a corporation, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Four Volumes
VOLUME III
Pages 949 to 1406

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

CHARLES HELBING,

called as a witness on behalf of defendants; was duly sworn and testified as follows:

Direct Examination

By Mr. Howard:

I have been a millman about 30 years, since 1904, is when I joined the Brotherhood. Prior to that I was with the Amalgamated Wood Workers for two years. I have worked in various mills in this locality during that period, and I am employed now at Wisdom Mill & Lumber Company, San Mateo.

I was president of Local 42 in 1906, and have been active as delegate to the District Council, also Building Trades Council. I was business agent in 1936 to the latter part of September, when I resigned. When the agreement of September 21 was signed, I was out of the city. I was broken down with health and ordered by the doctor to take a rest. I got back in February, 1937 and worked in Brisbane for a while.

I became business agent of Local 42 again in 1939, in the middle or latter part of January. There was a confusion in the mills in regard to the auditing of the old and the new work, and I helped straighten that matter out. That had reference to a change in wage scale as it affected old and new work under the wage agreement. The award was handed down June 15 and the work that went prior to that was allowed to be done on the old wage before they advanced the wages. Other duties were

(Testimony of Charles Helbing.)

to enforce the stamp. We had a contract which was negotiated with the Associated Mills and that contract was also applied to the independent mills, where we were successful in getting them to come along, which meant the same contract. The contract seemed to be abused to an extent of not living up to it by some of the independent mills, and there was unfair material passed out with union material, which was absolutely against the contract and hard to distinguish on the [746] outside, whether it was all union or all unfair. There was complaint about non-union material being run through these contract mills and reaching the jobs, because the contractor or the carpenter, himself, which we contacted, would have some work there that had the union label, the Brotherhood stamp, and some material that was not stamped, and confusion was such that our membership was accused of neglect of watching for stamped material, and we had to press the matter so that we as millmen knew that was not a fact, and to establish that and get the proof, we had to canvass these shops and find out exactly what was going on. We did find that to be a fact. There was some stuff stacked up that didn't have the label and they were mixing it with material that did have the label, and so disguising the work that it would be handled unbeknown to the carpenter, that he was using anything not exactly what he wanted to use in regard to handling union-made material.

(Testimony of Charles Helbing.)

I began to check material going through on these jobs to see what was union and what was non-union. At the time the minutes of Local 42, under date of April 19, 1938, was reported, "Brother Helbing stated that mill stamp was not properly enforced, and that the carpenters were not demanding stamped material. Fight of Local 42 was to see that carpenters do enforce stamp. Pledge to mill owners to enforce stamp was not carried out, and it may become injurious to coming negotiations."

I was working on machines in a plant that did not belong to the Association, and I knew it was violating the agreement, using material that was not allowed in the contract, and thereby was indicating to the organization that we were not carrying out our contract—asking for the activity of the business agent, that we as an organization when we signed a contract with this associated organization and independent mills have the same contract, and a pledge to us that they will be upheld, and that was not being done. The contract referred to with the so-called [747] association was the identical contract entered into as to provisions with all of the other mills in the locality—the 1936 contract. I don't know how many associated mills were in there exactly—there ain't over 10 or 12, the same number of cabinet makers. We have a list of mills that have signed the contract that may be well over a hundred. Practically all of the mills in the locality were unionized by the same 1936 contract, at the

(Testimony of Charles Helbing.)

time I was speaking. These contracts were signed with the individual mills the same as the association contract, and there is naturally a pledge to uphold them. The same contract exists. The only difference is language on the top, but the contract and carrying through is the same, signed by the individuals and turned in to the District Council of our organization, for approval. My comment related to the enforcement of the contract without discrimination among all of the contractors.

The circumstances that relate to Coos Bay Company referred to in the minutes of the meeting of May 9, 1939, wherein it was stated, "Stopped 31,000 feet of T. & G. in San Mateo that was rerunned at the Coos Bay Mill in Oakland, which mill has hired union men at all times, but does not have a union label, * * *" were that no material was stopped. I happened to be there and saw this material, and it was not stamped, and I asked the contractor where it come from. We found out this material was run at Coos Bay, supposed to be made under a fair condition, and that was all there was to it. It came from a place that was employing our men—a local matter. I could not say if they had a contract, but I was informed from the other side of the Bay the firm was employing our men and that settled that part of it. It was not rerun to my knowledge. Coos Bay Lumber Company produced it in the first instance.

The circumstances giving rise to the minutes of

(Testimony of Charles Helbing.)

May 16, 1939, wherein it was reported that the Greater City Lumber Company [748] was bringing mill material in San Francisco and B. A. Helbing take the matter up with these people. We found that the Greater City Lumber Company brought in some jambs to be put through a process that our local men, the carpenters, would handle. It had no stamp. We found there was a mixture of union-made material and some without the stamp—a quantity of jambs that go around the door. There had been complaint to the organization that we should straighten matters out in such a manner that he could handle the stuff, all union—not partly one way and partly the other way. That is the Greater City Lumber Company. I don't know if it was Mr. Jefferson who testified here. I addressed them as a whole and stated the facts to them, that our men would not handle that material, that we had trouble on it, and that we had now undertaken the precaution to run that job in the right manner.

Thereafter, work was performed on it by union men. It was put in the Aeme Mill, that is Munson Brothers. The material was run through a sanding machine. It takes away the rough stuff—makes the surface smooth and a more finished product. It could not deteriorate it in any way. Our men handled the material.

Reference in the minutes of September 1, 1939, about the use of display cards and home industry, referred to the following: There was a piece in the

(Testimony of Charles Helbing.)

press a great many of our men were out of employment—I would say a couple hundred at least—and we found it in the press, this was a ghost city, and I thought it to be good business policy to boost this locality, instead of running it down, and I went through the sales places, supply houses that handled our material, and asked them to work and purchase union-made goods; that is, our material in this locality, because our men were out of work. That a dollar here was a dollar saved, making an actual boost for the community, and in this travel I put out this booster-card, and some that I met had told me; he says, one of the Chamber of Commerce people are here giving the same kind of a talk that [749] you are delivering now, and they agreed with the proposition and I had very few who objected to it. There was nothing in it that was hurtful, only for the good of the community and obvious benefit to get the men off the street—that is the main object I had in view.

I went to Symon Bros. for that same purpose. I remember meeting Mr. McNamar. I went in there to give him a sales talk on San Francisco products. It is hard to recall the conversation. You just go in and explain about the situation existing in this city and of the benefit there would be if they purchased from the city and help the city along. I never stated in substance or effect they would be required to buy here. He did promise, he says he would look the matter over and give it thought.

(Testimony of Charles Helbing.)

That was the end of that visit. I gave him ample time to think things over, and the second time I went there, the answer that he gave, he was very blunt and turned to the side and kept on working, you know, as people do, and I sat there and got somewhat dumfounded, and I finally said, "Is that your answer?" And he said, "Yes," and I walked out. Up to that point, I did not investigate the type of material Symon Bros. were turning out. At a later time, I should judge it might be a month or so later, I saw unloaded a car that contained sash, and naturally being interested, I investigated and found that it was Symon trucks that were loading the sash. This sash was not union-made and knowing that this material was unfair, I took it up with both Councils, and the suggestion was, why not pay the gentleman a visit and see if we can't straighten these matters out.

That was the third visit, when Messrs. Ryan and Ricketts accompanied me. These sash came into Symon Bros., were unloaded from the car on a truck and delivered to Symon Bros.—nothing stopped about it. The approach was for union-made material in regard to these three meeting together. There was nothing said relating to union-made doors. He might have said that they had union-made doors, but we never protested against that at [750] all. We never objected to any union-made material he had. Objection was to the non-union sash, and he said, after we talked to him at

(Testimony of Charles Helbing.)

some length, he would give the local mills a chance to figure the work and we let it go at that, and that was what it amounted to.

I was business agent in the early part of 1936. We were enforcing the stamp at that time. That was prior to the 1936 contract. There was not any difference in my activities so far as the enforcement of the stamp then and under that contract. Promotion of the campaign of local products had nothing to do with the contract at all—it was simply to boost up the city and bring it back to where—some people said it was going dead. There was no discussion between me and any employer representative when we were formulating our policy. This plan was formulated between Mr. Ryan and myself. I did not ever make, nor am I aware of any oral or so-called secret contract between myself or any union with any employer, relating to restraining out of the State material from coming here.

“Mr. Howard: Q. Were you acting with intent then in any way than to carry on your objects of labor and the acquisition of proper working conditions in your activities here?”

“Mr. Howland: Objected to on the ground that intent is immaterial.

“The Court: Sustained.

“Mr. Howard: I presume it is not necessary to offer that same offer of proof, your Honor, in regard to the other testimony, for example, an offer of testimony that might be offered here relating to this objection?”

(Testimony of Charles Helbing.)

"The Court: I do not know what you are referring to.

"Mr. Howard: If your Honor will recall, I was somewhat troubled in connection with this line of testimony on the previous occasion that there might be the same objection, and I made an offer of proof with respect to the intent with which these men were acting.

"The Court: I think the intent is immaterial.

[751]

"Mr. Howland: We have an understanding that it is not necessary to offer this same thing through each witness.

"The Court: I do not know; I hardly think so.

"Mr. Howard: Your Honor's ruling would be the same?

"The Court: Yes.

"Mr. Howard: That is all."

Cross-Examination

By Mr. Howland:

I was a business agent of the union in 1936 and again in 1939. During the intervening years 1937 and 1938, I was delegate to the District Council, from June, 1937, to June 1938. I didn't act in any other representative capacity. I acted on negotiating committees in 1938 when that revised agreement was made. I signed the 1938 contract. It was revised after the arbitration award. It was the contract that the Brotherhood rejected, section 2 in the

(Testimony of Charles Helbing.)

contract. This contract, I had nothing to do with it, in negotiating it or anything else, just merely that this paragraph was placed in by the request of the Brotherhood. It won't be changed. That is all I had to do with the contract. I signed the contract on behalf of my Local. I had nothing to do with Exhibit 175, the 1938 contract. I took part in the negotiations relating to a contract. A contract did not result. In the early part of 1936 and until I became ill, I was active. When the contract was made I became ill and never finished the contract at all. I think there was Kelly and Sammet on the committee with me. I signed the 1935 contract. I helped negotiate in 1936, was taken sick and never finished it.

I was elected business agent in the month of January, 1939, and continued to act during the entire year. I was not the only business agent. Wilcox was business agent at the time. He was elected the June prior, for a period of a year. I was re-elected in June, 1939. From January to June the Union had two [752] business agents. When Mr. Wilcox's term ended in June 1939, I was reelected business agent and he was not.

A considerable number of independent mills and dealers having the same contract during 1938 as the Association had. The contract was negotiated in 1936. It was a two-year contract. I am speaking of a contract negotiated between the unions, cabinet manufacturers institute, the associated mills,

(Testimony of Charles Helbing.)

and other employer associations. The same contract in effect was then negotiated and executed with all of the independent firms referred to. It is true the independent firms were called upon to sign that contract, after the union dispute with the association. I couldn't say if it was likewise true with respect to the 1938 contract. I was not on the job. I was working at tools.

The circumstances which gave rise to the minutes of April 19, 1938, involve firms that were violating the contract. It was the firm I was working for—Thompson Mill Sash and Door.

With reference to the minutes of May 9, 1939, the T&G at San Mateo, it is correct that later investigation revealed that material had not been rerun. I am not responsible for what the secretary says. It was not rerun. I didn't write the minutes.

With respect to the minutes of May 16, 1939, Greater City Lumber Company, I said there was material there that was a mixture of union-made and non-union-made. I do not know from where that material came. I did not know at the time. It was jambs, door stock, jamb door stocks. They were completely manufactured jambs, were all ready to be used.

I never made any demand on Symon Bros. I did not tell them they would be required to buy locally. If you are doing business with anybody you cannot tell them, you have to ask them to do it. I said in the Local that they should be put on the

(Testimony of Charles Helbing.)

unfair list, and along with the Councils, who refused to take action until they investigated the matter, or straightened the matter out, [753] because this stuff was unfair that was coming in. I did personally recommend that Symon be put on the unfair list. That was done in the meeting of the Union, after the delivery of the unstamped material to his place of business. I don't know where it came from. I wasn't told it was Northern sash when I called at the office of Symon Bros. I don't know whether it was or not—that was immaterial to me, because it was not union. As a result of my recommendation, the Local Union asked that they be put on the unfair list. That resolution was passed on to Bay Counties District Council. I think Bay Counties District Council approved the resolution, and also recommended Symon be put on the unfair list. The action of the District Council was then referred to San Francisco Building and Construction Trades Council. I can't recall the meeting of the Executive Board of San Francisco Building and Construction Trades Council, at which Mr. Symon, or some representative of that concern, was summoned to appear. Mr. Westby is our regular representative from the local who attends that Executive Board. I can't recall exactly whether I was present there with Westby or not. I think that they took the matter up and it was to wait on Symon Bros. I can't remember what the outcome of that was, to be really accurate on

(Testimony of Charles Helbing.)

it. I was present at the meeting of the Local Union on December 12, 1939. I guess I made some reports to that meeting. I guess Westby made the statement referred to in our minutes of December 12, 1939.

“‘Building Trade Executive Board. Brother Westby reported Symon Bros. were notified to appear before this Board and show cause why they should not be placed on the Unfair List. Symons agreed to use local mill work and go along with the program. Brother Helbing also spoke on this case and stated Symons will ask for local bids.’”

I recall I also spoke on the case and stated, “Symons will ask for local bids.” [754]

During my employ as business agent, during the year 1939, I never told any lumber dealer in the City, that milled material from the North was not allowed in San Francisco. As long as it contained a label it was useless to tell them that. I never made a statement of that kind to Posey Lumber Company. I made a statement recorded in the minutes of Local 42, the meeting of February 14, 1939, which reads, “carload of milled material from the North for the Posey Lumber Company, told these people that material was not allowed. They promised not to have any more shipped into San Francisco.” That was trim material that was going to a furniture concern, and I told them that as far as work going to the outside, the carpenters would not put this material—if it didn’t have a stamp. It

(Testimony of Charles Helbing.)

was unstamped material, and I never went any further with that material, because it didn't concern our workers, or the carpenters, directly. It was going to a furniture place and was not disturbed, and I asked them the question if they would, in the future, go along with the proposition of using union-made material. I didn't ever tell Posey Lumber Company to have that same material rerun locally, I am absolutely sure.

I didn't make the statement shown by the minutes of the meeting held April 4, 1939, "Posey Lumber Company received a carload of knotty pine; told to have it rerun." I can't recall a statement of that kind.

During the year 1939, in addition to the matter at Coos Bay shop, I think I had occasion to go to San Mateo and check up on material, besides the Coos Bay transaction. I do not recall the concern involved. There is a West Bay Lumber Company in San Mateo, or Redwood City, in San Mateo County. It is in the jurisdiction of Local 42, and it ain't. It is according to the material, when you are looking for material that is unfair and tracing it, then we follow through: That firm employs members of the [755] Brotherhood locals, I don't know whether they are all 42 or not, I couldn't say whether any member of Local 42 are employed by West Bay Lumber Company.

Simmons is a business agent of parts of San Mateo County—they have it divided. I think he is

(Testimony of Charles Helbing.)

with Local 162. He is business agent of both a carpenters' local and millmen's local in that locality, as a rule. I don't know whether Simmons was along or not, in checking material at the West Bay Lumber Company. I went down there. I just can't recall exactly what that was. I know I paid a visit to him in reference to material and asked him, as he had a stamp there, to purchase all union-made goods so we would not have confusion in regard to filling a contract. That was the reason I was on the job. Knotty white pine might have been included in the material I checked up on him. They have made knotty white pine in the San Francisco Bay Area. I have made it out of knotty white pine. It is paneling stock. I made lots of knotty white pine at Thompson's mill, where I was working, in the city. I never checked on any material at the direct request of the Secretary of the Cabinet Manufacturers Association,—Mr. Ennes, I am sure of that. I do not recall making the statement referred to in Exhibit 6, minutes of Local 42 January 23, 1940.

“ ‘Had a phone call from the Secretary of the Mill Association in regard to T. & G. flooring going in on a warehouse on Third Street of the Safeway Store; Cahill has the job and agreed to go along,’ ” as written. .

~ During the year 1939, I had correspondence addressed to the local union that was turned over to me to take care of. From time to time I contacted people who had written to the union, and rather than writing them a letter would go and see them.

(Testimony of Charles Helbing.)

I don't know whether I called on Jones Hardwood Company in December, 1939. I remember calling on the Jones Hardwood Company—I saw Jones, himself, I think. I know he was connected with the firm. He addressed a letter to the council, I believe, and it was turned over [756] to me and I went there in person to talk to him.

I guess that Exhibit 11-8 is the letter. Thereupon, said Exhibit was read as follows:

“ * * * This is a letter on December 28, 1939, from Jones Hardwood Company, Nelson E. Jones, Manager, addressed to the Secretary of the Carpenters' Union, 200 Guerrero Street, San Francisco:

“ ‘Dear Sir:

On a number of instances, where we have had orders for doors manufactured by the Roddis Lumber and Veneer Co., Marshfield, Wisconsin, it has not been possible for us to complete delivery due to some restriction that your Union has made or imposed.

“ ‘Will you please advise us if this policy is still in effect.

“ ‘Also, it has been a practice to bring Ponderosa Pine into this market in some grades, run to certain patterns. Several months ago we unloaded a car of this material and were paid a visit by one of your delegates, who advised our foreman that this material constituted ‘hot cargo’ and that our men could not handle it.

(Testimony of Charles Helbing.)

“Will you please also advise us if this policy is still in force?

Yours truly,

JONES HARDWOOD COMPANY,

NELSON E. JONES,

Manager.”

I didn't tell Mr. Jones that policy to which he refers in his letter was still in effect, in those words. He spoke about the doors. It was a patented door and these doors were to be passed by the Carpenters on some particular job here, which I didn't know anything about, and when he asked about that policy I told him when that time arrived and he handled that door, we would take the matter up. I am talking about the Roddis door. That is what he refers to as unfair or unstamped material. I don't know where it came from. The subject of the matter was that I didn't think our union men would handle that material, it had to be union goods. He didn't say that material had come from the North, [757] Oregon and Washington. He just merely mentioned that Ponderosa pine, and I really don't know whether it comes out of this State or Oregon or Washington. I know I have occasion to run at the present time pine molding into pattern on the machine I operate. That is my line of work.

I knew of the existence of a clause in the Carpenters' contract known as the non-stoppage of work clause. I know such a clause exists. I am not defi-

(Testimony of Charles Helbing.)

nite on whether that clause applies to both union- and non-union-made material. Source of my information is the way the contract reads. In regard to the membership, a contract might be made, but still you have the membership to contend with in regard to running non-union material.

Thereupon, defendants introduced in evidence Exhibit No. 73.

"Agreement Between Cabinet Manufacturers Institute of California, Northern Division, and the Bay Counties District Council of Carpenters

" "This agreement entered into this first day of May, Nineteen Hundred and Thrity (misspelled)-eight between the Cabinet Manufacturers Institute of California, Northern Division, and the Bay Counties District Council of Carpenters, In order to establish the Wages, Hours and Working Conditions of carpenters employed on construction and commercial fixture work, in the Counties of San Francisco, Alameda, San Mateo, Marin, Witnesseth that the two parties hereto agree to the following:

WORKING CONDITIONS

" "1. Eight Hours will constitute a day's work except as otherwise noted. Where part of an eight hour day is worked pro rate rates for such shorter periods shall be paid.

" "2. Five Days, consisting of not more than eight hours [758] a day, on Monday to Friday inclusive, shall constitute a week's work.

(Testimony of Charles Helbing.)

“ ‘3. Wages. The rate of wages for Journey-men Carpenters shall be One Dollar and twenty-five cents (\$1.25) per hour for employment during regular hours. Nothing in this section shall prevent an employer from voluntarily paying a higher scale.

“ ‘4. Overtime shall be paid as follows: For the first four (4) hours in addition to the first eight (8) hours, time and one-half. All time thereafter shall be paid double time. Saturdays, Sunday and Holidays from twelve Midnight of the preceding day shall be paid double time.

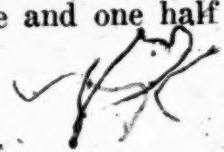
“ ‘5. Where Two Shifts are worked in any twenty-four (24) hours, eight (8) of said hours to be between 8 A. M. and 5 P. M., shift time shall be straight time. Where Three Shifts are worked over time equal to one hour's pay shall be paid on all shifts.

“ ‘6. All Work except as noted in Paragraphs 5 and 9, shall be performed between the hours of 8 A. M. and 5 P. M.

“ ‘7. Recognized Holidays shall be New Year's Day, Decoration Day, Fourth of July, Labor Day, Admission Day, Thanksgiving Day, Christmas Day.

“ ‘8. Men ordered to report for work, for whom no employment is provided, shall be entitled to two (2) hours pay.

“ ‘9. In Emergencies, where premises cannot be vacated until the close of business, men then reporting for work shall be paid time and one half



(Testimony of Charles Helbing.)

up to midnight. Any work performed on such jobs after midnight shall be paid double time.

“ ‘10. Only Two Classifications of mechanics are recognized in the crafts, journeymen and apprentices.

“ ‘11. ‘Journeyman Carpenters.’ The term of ‘Journeyman Carpenter’ as used herein, means an employee who is qualified by experience and ability to perform work with carpenters’ tools, or such other tools as are necessary in the performance of carpenter [759] work. All work performed with carpenters’ tools shall be done with journeyman carpenters and/or apprentice carpenters; except the following may be done by either carpenters or laborers at the option of the employer:

“ ‘(a) Stripping concrete forms. (b) Removing of scaffolds. (c) Removal of material and man-hoisting towers. (d) Wrecking for alterations and reconstructions. (e) Placing and removing of concrete runways. (f) Distributing and handling of building materials from point of delivery to point of installation. (g) Drilling holes in brick or concrete for attaching the work of carpenters. (h) Removing of sidewalk pedestrian safeguards.

“ ‘12. ‘Apprentice Carpenters.’ The term ‘Apprentice Carpenter’ as used herein, means an employee undergoing a system or course of training in carpenter work, whose age when starting his apprenticeship is over eighteen (18) but not over twenty-two (22) years. The term of apprenticeship shall not exceed a period of four (4) years.

(Testimony of Charles Helbing.)

“ ‘13. Apprentice Ratio. Apprentices shall only be employed in the ratio of one apprentice to each four journeymen.

“ ‘14. Contracting. No work will be let by piece work, contract or lump sum direct with journeymen or apprentices, for labor services.

“ ‘15. Tools. Carpenters and apprentices shall furnish their own tools, but shall not furnish saw horse, ladders, mitre boxes, electric drills, or any kind of power operated machines or saws.

“ ‘16. The employment of Handicapped Workers shall be as regulated by the Conference Board hereinafter provided for.

“ ‘17. These ‘General Working Conditions’ Wages and Hours shall be effective on all work in the Counties of San Francisco, Alameda, San Mateo and Marin. [760]

* * * * *

“ ‘18. In order to bring about general recognition and enforcement of these ‘Working Conditions’ Wages and Hours, the Institute and the Council shall set up a Conference Board of six (6) members; three (3) to be appointed by the Institute and three (3) to be appointed by the Council.

“ ‘(a) To establish the general recognition and enforcement of the Wages, Hours and Working Conditions of this Agreement. (b) To hear and adjust disputes or differences that may arise in the enforcement or interpretation of this Agreement.

(Testimony of Charles Helbing.)

(c) To make such provisions for the employment and regulation of Apprentices as it may consider necessary. (d) To promote the mutual interests of the parties of this Agreement and the Building Industry generally.

"19. There shall be no limitation of the employer as to whom he shall employ or discharge, except that any employee doing carpenters work (misspelled) shall be, or within thirty (30) days shall become a member of a local Union affiliated with the Bay Counties District Council of Carpenters, excepting Superintendents not working with tools.

"20. All complaints of alleged violations of this Agreement and Working Conditions, shall be referred to the Joint Conference Board and its decision shall be final."

"Now, 21. This is non-stoppage clause that they say is not in the agreement:

"In the event that disputes or disagreements arise between the parties hereto and/or other groups in the Building Industry that threaten to adversely affect the interests of either party to this Agreement, no action will be taken by either party to this Agreement that will halt or interrupt the orderly conduct of business, but the matter will be referred to and dealt with by the Joint Conference Board.

"22. On February 1, 1940, negotiations shall be commenced between the parties hereto for an

(Testimony of Charles Helbing.)

Agreement for Hours, Wages [761] and Working Conditions for the period from May 1, 1940 to May 1, 1941, and in case these negotiations do not result in a settlement of all such points under discussion by March 16, 1940, then an Arbitration Board shall be selected as follows:

“(a) From a list or lists submitted by the Institute, the Council shall select one (1) man. (b) From a list submitted (misspelled) by the Council, the Institute shall select one (1) man. (c) In the event either party cannot select an arbitrator from the first list submitted, then other lists shall be submitted until selection is made. (d) These two selections shall become members of the Arbitration Board. (e) From a list or lists to be submitted by both the Institute and the Council a third Arbitrator, satisfactory to both parties (misspelled), shall be selected. (f) No member of the Arbitration Board to be connected with the Building Industry. (g) This method shall maintain until all three members of the Arbitration Board have been selected. (h) This plan of selection of Arbitrators may be altered or changed by mutual consent of the Joint Conference Committee.

“23. It is mutually agreed between the parties signatory here-to that in case of arbitration, any other employing organization which has in effect and is observing an Agreement with the Bay Counties District Council of Carpenters, or which is observing this above Agreement, shall be given

(Testimony of Charles Helbing.)

the opportunity of submitting briefs, in the arbitration proceedings.

“ ‘In case of the submisison of said briefs, written notice must be served to the undersigned of the intention to submit briefs at least one week prior to said submission. The above arrangements for the submission of briefs by the above first named class of employing organization shall aonly (misspelled) be in effect providing such employing organization has a similar arrangement in their Agreement with the Bay Counties District Council of Carpenters, providing for such submission of briefs. It is, however, [762] mutually agreed and understood that in case any of the above described other employing organizations request the permission to submit briefs, this privilege shall only be afforded them providing they signify in writing their willingness to abide by the results of the arbitration in which they submitted briefs.’

“24 is the only part which was heretofore read:

“ ‘No Carpenter under the jurisdiction of the Bay Counties Distieict (misspelled) Council of Carpenters shall work on the installation of commercial fixtures, store fronts, or the structural work incident thereto, unless the contractor undertaking the work has subscribed as a member of an Employers Association or as a Contractinct’—this may be a matter of dispute, as to what this word is, but it is quite clear it is ‘Contracting’—‘Contracting firm, to an Agreement comparable hereto.’

(Testimony of Charles Helbing.)

"The Court: It is undoubtedly.

"Mr. Faulkner: Would your Honor care to look at it?

"Mr. Howland: It is stipulated that means 'Contracting.' I think obviously it is a typographical error.

"Mr. Faulkner: In your examination of Mr. Ryan it seems to me there was some importance attached to that word, but you stipulate that it is a mistyping and that the word intended to be typed is 'Contracting'?

"Mr. Howland: That is it.

"Mr. Faulkner: The last paragraph is as follows:

"25. This Agreement shall become effective on the first day of may (misspelled), nineteen hundred and thirty-eight and shall remain in effect until the first day of May Nineteen hundred and forty, provided that on or before the first day of February, Nineteen Hundred and thirty-nine, either party may give notice in writing to the other party of a desire to negotiate a modification of wages and hours during the period from May first, Nineteen hundred and thirty-nine to May first Nineteen Hundred and Forty, [763] at which latter time this Agreement will expire unless continued by joint agreement of the parties hereto. In the event such negotiations are called for and do not result in a settlement of such wages and hours under discussion by March sixteenth, Nineteen Hundred and

(Testimony of Charles Helbing.)

thirty-nine, then an Arbitration Board shall be set up to decide all points not agreed upon as provided for under Section 22 hereof.'

"The signers of the agreement are Cabinet Manufacturers Institute of California, Northern Division; J. G. Ennes, Manager, Bay Counties District Council of Carpenters, D. H. Ryan, Secretary.

"Signed in San Francisco, California

"Thid (misspelled) 6th day of May 1938.'

"This at one time bore the number 73 for identification. I assume it will bear a letter.

"(The agreement was marked 'Defendants' Exhibit 2-F.')

"Mr. Howland: I should like at this time to offer in evidence a similar contract to that for the year beginning November 30, 1937, which has been marked Government's Exhibit 114-25 for identification. I have been following Mr. Faulkner as he read this previous exhibit and I might say that with the exception of the typographical errors or misspelled words, that this paper is identical, word for word, with the one which you read, except only paragraph 25, the last paragraph, which has to do with the term for which the contract will be effective.

"The Court: The contract is between whom?

"Mr. Howland: Between the Cabinet Manufacturers Institute of California, Northern Division, and Bay Counties District Council of Carpenters.

"The Court: It is dated when?

(Testimony of Charles Helbing.)

"Mr. Howland: November 30, 1937, and paragraph 25 says it shall be effective from the first day of December, 1937, until May 1, 1938. [764]

"Mr. Faulkner: You might as well read the paragraph exactly. We have no objection.

"The Court: It may be admitted.

"Mr. Howland: Paragraph 25 is the only one where there is any change, and it reads as follows:

"25. This Agreement shall become effective on the first day of December, nineteen hundred and thirty-seven, and shall remain in full force and effect until May 1, 1938, at which time it will expire unless continued by joint agreement of the parties hereto and shall not be retroactive, but shall be applicable to all work except where contracts have been signed or where bids have been submitted and opened prior to the effective date."

"The Court: It is admitted.

"(The agreement was marked 'U. S. Exhibit No. 114-25.')

"Mr. Faulkner: The same signers?"

"Mr. Howland: J. G. Ennes for Cabinet Manufacturers and D. H. Ryan, Secretary, for the Bay District Council."

Redirect Examination

By Mr. Howard:

I recall testifying I don't know whether I attended the meeting of the Building Trades Executive Board at the time the question of Symon Bros.

(Testimony of Charles Helbing.)

being placed on the unfair list was presented. The minutes referred to were of a meeting of Local 42, and reported that I spoke on the Symon's case and stated Symon will ask for local bids. I do not remember of attending the executive board meeting. My statement was made at a meeting of Local 42. It seems to me the executive board meets on Tuesday and so does the Council meet on Tuesday. That minute has no bearing on whether I was present at the executive board meeting or not. The committee meets in the same building. There could be a possibility I attended both meetings, but I can't recall it.

San Mateo mills and shops have the same agreement that involve unions, with the same provisions as to enforcement. With [765] reference to the Safeway Store job and some telephone conversation with the secretary of the mill association, referred to in the minutes of Local 42 of January 23, 1940, that job was not already let to some contracting party involved in our contract. Gaetjen was doing this job. We got this out of the Architectural report of Pacific Builders. We got our information from that and found out where the contracting party is, and if we find there is material to be used we contact the party and ask him if he would patronize local material or union-made material, and sometimes they would concede it and sometimes not, but in this particular case I had asked Mr. Ryan, Secretary of the District Council, after reading the Pacific Builder, if he would contact the

(Testimony of Charles Helbing.)

party in regard to that material, knowing it would require heavy flooring which should carry a label in our district, and this party agreed he would go along. He did ask Ryan, Ryan said to me, if he had to do it and he said, "Well, no, it was not that you have to do it, but you do it at the request of the millmen. There are parties out of work, and we would like to have that work." There was not any question that I know of of a bid having been let to anyone other than local people in that Safeway job. I didn't ever hear it was not going locally. We see these reports, we see whoever the people or shops are in this Builder, and then we contact to see what the material is that he uses, and ask him if he will not go along with local-made material. There was no suggestion from anyone this was not to go locally at any time. The hostility, we were trying to straighten out a contract, and he did volunteer, there was some sarcasm about this particular job, I believe, and I said, "That job has been taken care of," and I presume his mill did not get it, because it was going to some place else. I said that job was going locally. There was no question of any outside bid having been negotiated before.

Recross-Examination [766]

By Mr. Howland:

I told the firms I visited, as long as it had the union stamp, if it was union-made, it was okay. I didn't ever tell any of the officials of Symon Bros.

(Testimony of Charles Helbing.)

they had to have the work done locally. The only thing I used in telling lumber dealers was, that our union members would not work on this material if it was brought in, that is, if it was not labeled material. I don't recall having told anybody what the consequences would be if they persisted in bringing in material from outside the Bay Area, only to the effect that our men would not use that material.

During the time I was business agent, during 1939, I spent time finding reports that non-union material was being used in the locality. That is where some concerns, jobbers, who purchased union-made material would also sandwich in with the other and make it appear it was all union, which confused the carpenter. I did not find out where this material was coming from. Of course, we knew it came from out of, from away from the city, so far as that is concerned. I spent time finding out where—not exactly where it came from; I would be looking out for non-union material. I didn't spend time finding out where it came from, in that way.

I made the statement referred to in the minutes of the meeting of Local 42, of September 12, 1939, where the following appears:

“ ‘Spending considerable time finding out where the millwork is coming from that is not made in San Francisco. Having meeting with some of the Homebuilders tomorrow, routine.’ ”

(Testimony of Charles Helbing.)

This millwork came from San Francisco, was trailed back, after finding it was non-union, to a concern that was operating in San Francisco, and I went to that concern to get the real facts on the matter, and afterwards this concern signed up and went along. We gave them the stamp. I checked the material that was non-union made. I checked the material regardless of where it [767] came from. I did check the material, that is true, of course, to find out whether it was union-made or not. I did try to find out just where the mill was located, or the identity of the mill from which it came.

I cannot recall the firm on Bay Shore referred to in the minutes of Local 42, December 12, 1939, where the following statement appears:

“B. A. Helbing reports Brother Westby doing picket duty and found two consignments, one firm will have his stuff rerun, other firm on Bay Shore also agreed to go along and have their doors re-run after convincing these people about what the outcome would be.”

There are several firms on Bay Shore. There must be close on to around 8 or 10, I guess. There is some firms that operate mills and some are jobbers, warehouses, handle material, supply houses, you would call it. West Bay Lumber Company is on the 101, Camino Highway. I must have made the report, “The firm on Bay Shore also agreed

(Testimony of Charles Helbing.)

to go along." What firm that is it is hard to say, there are quite a few.

Further Redirect Examination

By Mr. Howard:

With reference to non-union materials, I would merely give them the fact that I don't believe they will be able to handle the material, because the carpenters would not use the material. Union men would not use it because, more or less, these concerns sandwich it with union-made goods and the other. That was the reason I made it my business to find out just what the source of this material was. You would find non-union material mixed in with the other and then you would get your directions perhaps from the floor of the organization, or a carpenter might tell you where the load came from, and you would go to that concern and talk to them and try to get them to handle local material. [768] When running back non-stamped material, I was desirous of finding out who had put it out without a stamp—that was the idea. The material was mixed. These yards would have stuff run with the stamp on it, and then would sandwich in the other stuff that come from some other source that didn't have the stamp on it, and that would create confusion. That was on the floor of the organization continually coming up. They would say the millmen were too lazy to put the stamp on the material. We don't know where it might be coming from. They

(Testimony of Charles Helbing.)

were continually trying to get the millmen in the locality to stamp their material. Later, we found where the source of that was. They were mixing the material with the stamped material and unfair material. When I was investigating the source of the material, I was investigating whether it was a non-union mill or a union mill.

Further Recross-Examination

By Hr. Howland:

It must be mixed material that this firm on the Bay Shore, I can't recall the kind of material, or where it came from. If I knew the firm—as I said before, there are about 8 or 10 concerns along there handling this, supply houses, and so on and so forth.

WALTER C. O'LEARY

called as a witness for the defendants, (was duly sworn and testified as follows:

Direct Examination

By Mr. McKevitt:

I have been working as a millman 44 years, since September, 1897, and with the tools until 1934. Since then, I have been an official of my Union. I belong to Union 550 in Alameda County and have for 39 years, since October 1902. For seven years I have been business agent. I have heard the testimony of various witnesses. [769]

(Testimony of Walter C. O'Leary.)

I had an interview with Mr. Wine. He phoned and identified himself over the phone, and said he would like to interview me on the mill situation, and I asked him, "Where shall I come, shall I come over to San Francisco?" and he said, "I will come over there, and where can I see you on the Oakland side?" I made a date to meet him there. It is the only interview I had with Mr. Wine. There was a discussion there, as Mr. Wine has testified. He opened up the mill situation, and I told him that we had a union condition in Alameda County, good wages, good conditions, and we were interested in keeping those conditions. I told him we objected to materials coming in there made at lesser wages than ours, either non-union or union, but our General President, Mr. Hutcheson had taken the stand that if an article bore the union label, no matter where it came from, that label had to be recognized the same as a dollar- or five-dollar bill. I introduced Mr. Hutcheson's name into the conversation.

Reference to the Aladdin Company was in relation to the carpentry work. I told him what would happen to the millwork, we wanted it with a label on it. He discussed the Aladdin houses, and in a frank discussion with him, I told him just about what I thought would happen. There is a distinction between carpentry work and millwork, and if the carpentry work was done under conditions at a less scale than here, the carpenters would object to it.

(Testimony of Walter C. O'Leary.)

"Q. Do you know whether the Aladdin Company was union or non-union?

"Mr. Zirpoli: We object to that.

"The Court: Sustained."

I understand the Aladdin Company makes ready-built homes. They eventually are built on the lot. They arrive with rafters and everything cut to length. The millwork, doors and sash, and, I think, the flashing for the roof is in it, nails and roofing paper and [770] everything is there, except perhaps some plumbing. The assembling of those materials is carpentry work. Component parts of these ready-built houses do not come from any of the mills here. There would be no work done on them by any of the mills locally. If work was done by union men, the carpenters are members of various carpenters' unions. They are not members of 550 or 42. There are four or five carpenters' unions operating in this Bay Area. In Oakland there is 36, 1158, 1473, 194, a union in Hayward, five in Oakland, one in Richmond, 642.

In discussing any prospective work that might be required on Aladdin homes, I told him local carpenters would object to them coming in with the carpentry work done at a lower scale than they had here. It would be like bringing a \$6 carpenter into the locality and doing the work here; that they would not do it; would object, and that they probably would have to send their own carpenters along to construct the houses—that was my answer to him, if I remember correctly.

(Testimony of Walter C. O'Leary.)

I had conversation with Mr. Wine concerning Mr. Stewart of Symon Bros. It related to an incident at Symon's. Mr. Symon deals in second-hand mostly, and some new material. I checked his storage shed there—it can't be described as a warehouse, and found sash that was not union-made. First, I think it was doors. The second time we had changed the exempt list to the extent of taking the sash off it, they had doors that came without the label, and the next time it was sash. I told him he had some hot stuff in his warehouse. He wanted to know what I meant. "Well, you got some stuff in there that came without the label on it, and we would like to have you go along and have it made union, and locally if possible." That is the conversation with Mr. Stewart related by me to Mr. Wine.

I know Mr. Peel. I met him twice. I believe they rang me up from Symon Bros. and put him on the line, and we made a date [771] and he came down and met me at the Labor Temple. I think he represented the Central Door & Lumber Company, in Portland, and Albany Door Company, at Albany. Those are the two companies Mr. Peel represented as salesman and broker, so he said. I don't recall any other principal he represented in the North. He wanted to know what my objections were to handling their products. They were not union.

(In regard to Symon, I think there was a discussion about bringing in a car of not union-made

(Testimony of Walter C. O'Leary.)

stuff. He asked me what action we would take and I told him we would use persuasion wherever we could. He said, "What other action will you take?" I said, "It depends on the circumstances." "Would you put a picket out?" I said, "We might."

We did not at any time at Oakland put a picket line on any material that bore the union label. We didn't advise anybody over there we picket material that bore the union label, no matter from whence it came.

Mr. Wine did take notes of the discussion. He had a sheet of yellow paper and wrote down as I answered his questions. It seems to me I signed a statement at that time. I don't know. It occurred to me when he left that my word was as good as his at the time. If I didn't sign it—that is the question—that is going through my mind. I couldn't say definitely.

I left two copies of an agreement with Mr. Stewart, of Symon Bros. It was our regular agreement in effect at that time, that I had left with numbers of people around the Bay Area. I left a 1936 agreement, which included the exempt list. They generally wanted to know what the situation is and would say they had some doors on hand that didn't have the label. I said, " * * * What are they?" When we ask a man that question, I gave him one of those and they will look them over and say, "What can we do with the stuff that doesn't

(Testimony of Walter C. O'Leary.)

have the label?" They want to know where [772] they can get union-made stuff and they ask, "Where can we get the material with the label?" We have a number of them in mind and tell them, and they probably would put it down. No particular list was given Mr. Stewart. He asked me the question where he could get union material. I would say the nearest to my recollection would be the P. M. Company, the Eureka Mill, in San Francisco, Metheny Company, Hogan, Western Door, Boorman Lumber Company. I told him what he generally wanted to know—no list was made up by me. He jotted down the names. I didn't tell Mr. Stewart I would not permit him to handle material with the union label on it.

I recall the testimony of Chris Wininger. He represented a lot of lumber people up there, but Ewauna Box Company is one of them. As I recall, there was some molded edge 1x12 knotty pine tongue and groove, set up on saw horses at Sheehan & Ballard's yard, and it did not have a union label, and I proceed to make it known by tacking a sign, I think it was, "Hot Cargo." That was a popular slogan then on non-union material. All of the matter discussed with Mr. Wininger was because it did not have the label. I didn't ever tell Mr. Wininger my people in Alameda County would not handle material with the label.

The places of business of Mr. Carrick and Mr. Kleier are at El Cerrito, right across the street

(Testimony of Walter C. O'Leary.)

from one another. Carrick's is one section of the East Bay Area, where I ran into this car of lumber on the spur track at Stege, and found material that was not on the exempt list, round-corner pieces. I had had considerable trouble with Mr. Carrick before that, and in order to impress him a little more strongly, put the picket on first and went to see him afterward. I met him in his lumber yard and told him he had some stuff in his car not on the exempt list and it was non-union, it should have the label on it and didn't have it.

I had a discussion with Mr. Kleier. He had some knotty pine in the shed, and the material that was on these horses at [773] Sheehan & Ballard's it developed later were consigned to him. That is the way he comes into the picture. There was discussion with Mr. Kleier generally in regard to sash and doors. We were looking his place over and spoke to him about getting union-labeled doors, as required, mentioning also those that were on the exempt list that were being handled by the carpenters. About the time he mentioned we were in there, he did have local made stuff with the label on it, and doors from Tacoma with the label on it. I am certain he had doors with the label on as well.

Mr. Blackman's place of business is in Melrose. I met him in reference to some material he was unloading from a car that was not on the exempt list and did not bear our label.

All of the differences with Messrs. Carrick,

(Testimony of Walter C. O'Leary.)

Blackman and Kleier, come by reason of the fact that the material discussed was without the label. I didn't tell either or any or all of them my group would not handle material that bore the union label.

Matched T & G means there is a tongue on one end and a groove on the other, the same as the groove on one side and tongue on the other. The T & G described in the minutes of Union 550, dated January 27, 1938, was not on the exempt list of the 1936 agreement, or the 1938 agreement. There is T & G that is on the exempt list. It is not this 2x6 matched. I don't know of any oral agreement, secret or otherwise, between my union or any other millmen's union, concerning millwork or patterned lumber coming in from anywhere outside of the State of California.

Cross-Examination

By Mr. Zirpoli:

The statement for January 27, 1938, "Business Agent O'Leary told of matched end T & G 2x6 coming in from the North in violation of our agreement," could be what I said. I could have said that and probably would have under the circumstances. I would have said that was in violation of our agreement. The [774] agreement that contains that exempt section that was in existence in January, 1938. I was complaining about this matched end T & G coming in in violation of our agreement, without the stamp. It says, "Motion

(Testimony of Walter C. O'Leary.)

passed that secretary notify the District Council and Building Trades Council that we are opposed to the importation of matched end T & G, and ask their help to stop contractors from buying or using same which is in direct violation of our agreement."

Mentally, I could not say, but I would say this is a correct account of what happened at that meeting that night, in keeping with our agreement. Reference to direct violation of our agreement was the one that was in effect at that time.

I was business agent for millmen's local 550, from September, 1936, to July, 1940. I am familiar with clause 16 of the 1936 contract, Exhibit 131. The names that appear on the exempt list I testified I gave Mr. Carrick, Mr. Peel and Symon Bros., was a copy of exempt list from that agreement. Exhibit 140 is taken from the exempt list in the contract of 1936. We often discuss that clause at the meetings of the local union. We discuss that exempt list in the meetings of the Six Counties Conference Committee. They could be officials or they could be regular members.

I know of the 1938 contract. There were some changes made with the exempt provision. I thought there was a slight change. The exempt list appears on here with a modification. It excepts the sash, 2-light windows, are left off the 1938. Sash and the 2-light windows were no longer exempted.

When the contract was signed in July, 1938, it

(Testimony of Walter C. O'Leary.)

was after the arbitration and the award was subsequently modified. The modification became effective about October, 1938. Exhibit 175 is the modification of the arbitration award. The exempt list has been changed in that agreement. 2-light windows are not here. It is the same as in July. The discussion on any exempt list [775] would be the exempt list as existing in the contract in effect at the time of the discussion. Exempt lists in the 1936 contract and the July, 1938 contract, and the modification of October 18, 1938, are the only ones that ever existed, and they were the ones discussed in the meetings of the Six Counties Conference Committee.

Millwork and patterned lumber which was caused to be marked "Hot Cargo," was not necessarily from out of the State. It had no label on and that is "Hot." The lumber that came to Kleier Bros. was marked, "Hot." I couldn't tell you if it was out of State lumber. It might have been from the white pine belt in California—I couldn't tell you definitely. Lumber that came to Blackman & Anderson was from some belt there—from a white pine belt that may not be out-of-state. I didn't know on either of those occasions whether it was out of State lumber. I might have asked where Ewauna Box Company was, but that would have been of no moment to me. I didn't know where Ewauna Box Company was. I don't remember Mr. Carrick's lumber being marked

(Testimony of Walter C. O'Leary.)

"hot," or a car of "hot cargo," on his lumber. I went there with a picket and placed the picket, and spoke to Mr. Carrick afterward. Mr. Carrick said that came from Oregon, it was either Weyerhaeuser or Long Bell, I wouldn't say definitely, but it was Douglas fir or Oregon pine. I didn't ever tell anyone they would have to buy millwork and patterned lumber from local mills. We had no agreement to keep out any material. I didn't ever tell anyone about such agreement. The union objected to material made under a wage scale less than ours, whether it was union or non-union, it broke down that wage scale—that is what I told Mr. Wine. I objected to that, if made under a wage scale less than ours, whether it was union or non-union.

I believe I signed all the agreements. I participated in negotiations with relation to the 1936 agreement. The question of the wage scale and discussion of the objection of the union as [776] it pertained to materials made at less than the wage scale we had, would come under the general head of competition. They couldn't raise our pay. They had bad competition, from Los Angeles or Chico. We have some—quite a bit from outside of California. There was discussion, any point where it would come from, if it was made at a less scale than ours. That was discussed at the negotiation meeting with relation to the 1936 contract. I told Mr. Wine the Aladdin houses would be put up by

(Testimony of Walter C. O'Leary.)

the carpenters, not "have to," they would. They would be put up by the carpenters. Millwork comes into the construction of houses. The amount depends on the drawings. Doors, trimming, windows, is all millwork. Millwork done on pre-fabricated houses is usually at the point of manufacture. Wherever it is done it has millwork.

I know Mr. Roe. He is business agent for the carpenters' union, in Hayward, and also for Alameda County Building & Construction Trades Council. I don't believe he is related to the millmen other than he is a brother member of the Brotherhood of Carpenters and Joiners. He is not a member of the Millmen's Union. I couldn't say whether I was present or not at the meeting of business agents of the Alameda Building & Construction Trades Council, at which time the matter of Aladdin houses was discussed.

I told Mr. Wine that my union would object to any lumber coming into the San Francisco Bay Area, particularly in the jurisdiction of the Oakland Brotherhood, if it was made at less than our wage scale. If it was made less than ours, I did say we objected to it coming in—it would break down our scale. In using persuasive eloquence, if I am talking to you or anyone with whom I was having a controversy in the interest of getting union-made material, I try to make him see where it would be better for all of us, if he got it made locally. I was discussing union-made material, noth-

(Testimony of Walter C. O'Leary.)

ing else but. I had already told Mr. Wine President Hutcheson gave his orders as to what we were to do. I told him [777] how we felt and we would object to it under a lower wage scale than ours, whether union or non-union, and General President Hutcheson took the stand and issued the order where it was a labeled product it was as good as a dollar bill. I was referring to that made at less than our wage scale. There is only one scale, that is the one in the contract. We had an agreement with the union, between the millowners and the union, that called for a union condition. In making that agreement we insisted on that union condition and not only with the millowners but with any millwork that came in here—we wanted it union. That was my statement to Mr. Wine. That would apply to everything at large.

I spoke to Mr. Stewart and visited him at Symon Bros. I didn't go to see Mr. Symon about having him sign an agreement. I went there in relation to looking over his stock, to see what it consisted of, and the offering of the agreement to him to sign, resulted from our conversation. I left two agreements with him at that time, asked him to look it over and sign it. I always hand them two agreements. I say, "Here's a couple of agreements, look them over, I'll be back later." I usually returned later—not within two or three days—it takes them longer than that. I returned within a week or so. He had one man employed

(Testimony of Walter C. O'Leary.)

there so far as the Millmen were concerned, and that agreement would cover that man. I think I returned. The contract was signed before. They had discussed it with Mr. Symon and decided to sign it. I would not have a discussion with him with relation to the contents of the contract, after it was signed. He might have brought up some paragraph in the contract and asked for the application, and how his firm would conduct themselves in order to comply with the contract they had signed. That might have been the reason he asked me where he would get a particular material. He might have just asked me, "What is this line, here?" He might have discussed the exempt list—I couldn't tell you offhand. I discussed the [778] doors he had without a label.

"Q. I asked Mr. O'Leary a few questions on the contents of the agreement; there were a few things I did not understand and I wanted them cleared up.

"Q. What did you ask him about it?

"A. Well, one was in regard to bringing doors, and windows, and sash from the Northwest, where we had been accustomed to buy it.

"Q. Was there anything in the contract relating to that?

"A. There was.

"Q. Do you recall what it was? What did you say to him relative to that, Mr. Stewart?

"A. I asked him if it meant that we could not

★(Testimony of Walter C. O'Leary.)

bring any more stuff from the Northwest, and he said, 'Yes, it means just what it says there, you cannot buy from the Northwest any more, you have to buy locally.'

"A. I did not say that."

I might qualify my answer. I don't want to make a fabricator out of Mr. Stewart, but there are thousands of doors in warehouses in Oakland from the North and Northwest, where those factories are, that have the labels on them, and that would be proof I wouldn't make a statement of that kind, —in fact, I am glad to see the label on the doors, especially.

"Q. Now, Mr. Stewart also said. 'I asked Mr. O'Leary if I brought merchandise in that bore a union label other than made in here what would happen.

"Q. What did Mr. O'Leary say?

★ "A. He told me they would picket the place, that we could not bring anything in that was not made in the five counties.'

"Did you make such a statement as that, Mr. O'Leary?

"A. I did not."

I don't know where Mr. Stewart purchased his doors. The only thing I knew he purchased doors from Mr. Peel, I think, was when Mr. Peel came to see me. I might have discussed it with [779] Mr. Stewart, Manager of Symon, but I don't think so. I did discuss that situation with the man who was

(Testimony of Walter C. O'Leary.)

selling doors to Symon. I didn't discuss doors with him that bore the union label. This man Peel didn't handle a union door, so I could not ask it. I didn't tell him he could or couldn't bring in doors from Central Door and Plywood Company, and if he continued to purchase them we would picket the place and close them up on a picket line, and the doors had to be brought from the five counties mills. I don't know where Symon bought the doors. I did when Peel came to see me. I knew Peel was trying to sell him doors. Whether he got doors from Peel or not, I couldn't say. Mr. Peel was selling doors for Central Door Company, I learned that afterward from Mr. Peel. That is a Portland firm. They do not have the union label. They didn't have it in 1936, 1937, 1938, or 1939. I don't think they had it in 1940. I have never seen one of their doors with a label on it. They didn't have the label on the doors they had down here, anyway. If they are in fact entitled to the label but didn't use it, that is their hard luck.

I don't bother a great deal to look at the booklets. I look at the products in the warehouses and see if they have the label. The inquiry I made elicited the information they were not entitled to use the union label, and the proof of that was it didn't bear it on their goods.

I said I had met Mr. Peel twice. I think the date was made by telephone, where he was, I don't recall. The only recollection of any discussion with

(Testimony of Walter C. O'Leary.)

Mr. Peel about doors he was shipping in, was when he came to see me and we sat down on the steps of the Labor Temple by ourselves. He might have talked to me about doors on the telephone from Symon Bros., but I don't recall it.

"Q. Would this statement refresh your memory, this is Mr. Peel speaking: [780]

"I took the telephone and told Mr. O'Leary who I was, that I wanted to ship some goods in here, doors, and I said we were an A.F.L. mill and carried the union label, and I was astounded to think we would be restricted in not being able to sell our merchandise in any part of the United States.

"Q. What did Mr. O'Leary say?

"A. Well, he just told me that was the—Mr. Stewart—what Mr. Stewart was true."

"Do you recall that conversation?

"A. I do not.

"Q. And then a short time thereafter Mr. Peel says he went over and he saw you and had a conversation, asking you to explain the reasons why he couldn't ship merchandise in here, and did you have a conversation with Mr. Peel about shipping merchandise in here?

"A. Not about what he could or could not ship in, no.

"Q. What did you have a conversation with him about?

"A. He came about Symons refusing to buy his doors, because they didn't bear the label.

(Testimony of Walter C. O'Leary.)

"Q. Was that the statement, the only thing?

"A. Yes.

"Q. The only thing that was discussed?

"A. Well, of a business nature. We might have talked about the weather and one thing another. He was selling sash as well.

"Q. Did you discuss the necessity they have a stamp of a mill in this territory?

"A. That we would prefer to see the stamp on them. That is the only thing I discussed with him.

"Q. Well, this question was asked of Mr. Peel:

"'Did he say'—meaning yourself—'the material had to bear the stamp of a mill in this territory?'

"'A. That was his answer.'

"A. I say no to that, and I make the same qualification I made before, that there are thousands of sashes and thousands of doors in the warehouses in Alameda County with a label from outside this metropolitan area.

"Q. Do you say you made this statement to Mr. Peel: [781]

"'I asked Mr. O'Leary to explain the reason I couldn't ship in here and he just told me it was forbidden by the Union to bring certain classes of goods in and since there were manufacturers who had the union stamp in this territory here—so I asked him what our workmen up there were going to do to be able to buy merchandise and eat, and he said, 'Well, they would have to get along the best they could.'

(Testimony of Walter C. O'Leary.)

"Would you say you made that statement?"

"A. No.

I gave Mr. Peel one of the copies of the exempt list. It follows that he could bring his stuff here with and without the label, without, under the exempt list. We prefer to see it with the label than without. That is what they can bring in without. We prefer it with.

Mr. Peel made a second visit. I think he rang ~~not~~ at my home. I never told him what he could or could not do at any time.

I didn't bring the picket along, in the incident with John Carrick. I discovered the material in the car and due to the fact he didn't keep his word at other times I took immediate action. I put the picket on the car and went to see him afterward. I had had a conversation with him prior to that, many times, further back than six months—the N.R.A. days. I told him we required a label on the patterned lumber and millwork. We wanted to see the label on the goods. It was not our policy to tell all lumber dealers they could not bring merchandise in from the outside if it didn't have a label. They could bring in anything they wanted but we preferred the label.

The lumber that came in Mr. Carrick's car was stored down in the middle of the car. He had it hidden, but I was able to find it. That came from firms in the Oregon pine belt. I think I inquired where it came in from—I don't know. There was

(Testimony of Walter C. O'Leary.)

no indication on the car as to the shipper. I did not know the car was coming before it arrived. The siding is on my route to Richmond. It is part of my employment to go around and look [782] at sidings and shed, if I want to get paid. It was in accordance with a practice that I went to this siding. I looked at that lumber and ascertained it had no label on it. I went to see Mr. Carriek and he told me where it came from and I think he probably showed me the bill of lading. After you talk to them they are open and frank, they think they will be out of it. I told him [783] he better get that lumber out of his premises or we would make it known to the general public, he had it there. I didn't say, "better get it out." I told him if he put it on his premises we would make it known to the general public. I told him it would be better if he took it out of the County. This base was not on the exempt list. I wouldn't say "Yes" or "No" whether I telephoned Mr. Carriek about a carload of jams. I either telephoned about them or spoke to him about them. I couldn't tell you just how many cars of jams I discussed with him. He had a copy of the agreement, but I might have given him one of those copies of the exempt list to put in his pocket so he would be a good boy. I carried a number of them with me.

Mr. Chris Wininger telephoned and came to see me at Carpenters' Hall. I couldn't tell you the exact date. I would say that I gave Mr. Wininger

(Testimony of Walter C. O'Leary.)

Exhibit 146. The reason for giving this was that we had discussed the exempt list in committee to make it more specific. For instance, it mentions T. & G. but has no particular dimensions, and in making it that way gives the sizes, and the material he was bringing in was not on the list as modified. He came to see me about T. & G. and I gave him that paper not so he could understand what he could bring and what he could not bring in, it was what required the label. I did not know before the merchandise came in that he came to talk about that. That was a car on the Sheehan & Ballard track. I didn't know anything about its source. I probably read the grade mark on the end, but what was bothering me was, there was no label on it. It didn't make any difference to me where it came from if it didn't have the union label.

Mr. Winger appeared before the Executive Committee of Alameda County Building and Construction Trades Council. He never appeared before the Council. I was a member of that Committee as a business agent. The union requested, I believe, he be cited. I didn't have a discussion with him as to what is [784] permissible for him to bring in and what he could not bring in at any time. I wrote the word, "Out" on the piece of wood, Exhibit 149. I wrote the word, "O.K." on Exhibit 148. By "Out" I meant if he brought it in it would have to have a label; that this material in this district should bear the label, and this mark

(Testimony of Walter C. O'Leary.)

"O.K." under our exemption list could come in. I didn't know where that lumber came from. I believe I heard it mentioned where it came from, but I didn't know at the time.

I told Mr. Wininger Exhibit 149 was not on the exempt list. If he bought it here, I would consider it required the label and refuse to handle it, and he said that he wanted to go along that way, so he said "Will you mark these things so I know what needs the label." I said, "It is out." I didn't tell him they would have to be rerun to get the label. I didn't tell him whether he had to do anything. I didn't make the statement, it would have to be run and bear the stamp of the union. The label of the local union.

I remember going into Blackman & Anderson. I had discussions with Mr. Blackman about material not on the exempt list he had that didn't bear the label, getting it out of the car there. I do not know where that lumber came from. I told him it was "Hot." We might have had some words about it. I never told him he could not bring in that type of lumber or material. I didn't tell Mr. Blackman he would have to stop bringing in that type of material; that he would not be permitted to bring it in. I saw him again when he went into partnership with Mr. Anderson. I objected to material not having the label. There was a discussion and he said, "What am I going to do with it to get the label on it?" and the answer to them was,

(Testimony of Walter C. O'Leary.)

that to get it originally it had to be run by union sticker hand, and by having it run with a union sticker hand, he could get the label on there. I cannot recall what happened with that lumber. [785]

I know John Kleier very well. I went through his stock several times in 1939, before and after that we had lots to say at different times—John and I. I didn't tell him he would have to get rid of some of the stock he had there. I just talked to him about getting stuff with the label on, and when it came around, that there was not a label, then we went to it. John as a rule went along during the years you mentioned here, just a little prior to that he was still in the depression. I had quite a talk with him in 1939. I presume I did, about the stock he had. I did with reference to windows and doors. It might have been in a complimentary manner—he was going along pretty good. I never told him he would have to get rid of some of that stock and burn it up. I never talked that at any time. I do not recall while I was there with the others and going through the stock in 1939, that the statement was made by me or one of those with me that he would have to either get rid of it or burn it up. I know I would never make such a statement, myself. I never had a conversation with Mr. Kleier in which I told him I would not recognize material brought in from the Northwest, whether it had the union label or not. I would like to qualify that—when we

(Testimony of Walter C. O'Leary.)

found anything with a label in his stock, I could embrace him I was so well pleased, not a word said.

"Q. This question was asked of Mr. Kleier:

"Mr. Kleier, in your conversation with Mr. O'Leary did you discuss with him whether or not you could bring in material from the Northwest that had the stamp of the United Brotherhood of Joiners of America on it?

"A. This label was the United Brotherhood of Carpenters and Joiners. We did not discuss it, but he told me right out he would not recognize it.

"Q. He would not recognize it if it came from the Northwest regardless of whether or not it had the stamp? A. Yes."

"Would you say that you made those statements to Mr. [786] Kleier? A. No."

Cross-Examination

By Mr. Tobriner:

In my reference to Building Trades Council in my testimony in the minutes shown me, I didn't mean San Francisco Building Trades Council—my organization is not a member of San Francisco Building Trades Council, and I had no dealing at all with the San Francisco Building Trades Council.

MICHAEL D. CICINATO

called as a witness in behalf of defendants, was duly sworn and testified as follows:

(Testimony of Michael D. Cicinato.)

Direct Examination

By Mr. McKevitt:

I am affiliated with Union No. 550. I have been a member of it since 1914. I have been working as a millhand since 1905, continuously, to the present time. I was President of 550 in 1917 and 1918, and also in 1937 and 1938, from the month of July to July the following year. I was at no time a signatory to any of the agreements in evidence. I at no time acted on a negotiating committee. Between July of 1937 and July of 1938, when I was President, I worked with my tools and never participated in any meeting or negotiations concerning the 1936 or 1938 agreements.

CLARENCE HERBERT IRISH

called as a witness in behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Carson, II:

I am a member of the United Brotherhood of Carpenters, and belong to Millmen's Local No. 550. I joined that local in 1935 and have been continuously a member since. I am employed in Oakland at present, at the Alameda Air Base. Before that, I worked for E. K. Wood Lumber Company about five years. [787] I have held office in the Local

(Testimony of Clarence Herbert Irish.)

Union during the period from 1936 to 1940. I was President starting in July, of 1938, to the first of July, 1939, following Mr. Cieinato. I was on quite a number of committees. In the early part of 1938 I served on the negotiating committee of Local 550. I was a member of the conference committee. The negotiating committee is chosen from the conference committee. The conference committee is set up to meet with various representatives from the different locals in various counties.

We have six counties involved. There are four counties coming under the jurisdiction of the Bay Counties District Council of Carpenters. There is one Local in the Santa Clara Valley District Council of Carpenters, and there is another local in Pittsburg. I don't know just what district council that is. However, these two locals in the other two counties have formed a six-county setup and the members are chosen from those locals to meet and promote an agreement, and from that conference committee are chosen the members of the negotiating committee to meet with the employers to form an agreement. At the start, in 1938, the conference committee was made up exclusively of members from Locals 550 and 42. It was not until later in 1938 that it became a six-county committee. The negotiating committee is picked from the conference committee by the group as a whole suggesting names, and those names are voted on. They are approved by the local union, but members of the con-

(Testimony of Clarence Herbert Irish.)

ference committee are given latitude and quite a bit of power, and they have the power usually, at least in 550, and I assume in the other locals, to appoint members of the negotiating committee from within that committee.

The negotiating committee usually reports back to the conference committee, sometimes it doesn't, but in no case has it power to make any definite move without first reporting back to the members. In connection with my membership on the [788] negotiating committee in 1938, I met with employers in the spring of that year to discuss negotiating a new contract. I attended substantially all of those meetings.

Brothers Ovenberg and O'Leary were on that committee with me, from Local 550. Members from 42 were Brother Kelley and I don't recall whether it was Wilcox or Edwards. The agreement that was signed will show who it was. That is Al Edwards, he is not a defendant here. Ryan was in the District Council. Mr. Ennes represented the cabinet manufacturers, Mr. Gaetjen represented the planing mill owners, Mr. D. N. Edwards represented the mill owners and cabinet manufacturers, from Alameda County.

The entire contract came up for discussion, each paragraph was taken paragraph by paragraph, and the violent discussion arose over wages and hours, particularly wages. The negotiations lasted three months or over. Eventually, it was submitted to

(Testimony of Clarence Herbert Irish.)
arbitration. I was not a member of the arbitration board. My activities ceased temporarily, when the matters were submitted to the arbitration board.

With reference to the general discussions which led up to the final language of paragraph 17 of the 1938 contract, Exhibit 132, we union men were not at all agreeable to an exempt list, and of course, naturally the employers wanted to exempt everything possible, and we fought the thing back and forth for quite some time. Eventually the list that was included there was decided on and made a part of it. I would say more or less mutually agreeable to all parties concerned, although, of course, we objected to it, but finally agreed. There was an award handed down by the arbitration board. The principal feature was that \$9 wage, or \$1.12½ an hour.

Government's Exhibit 132 is the contract drafted to contain the provisions of the award, in addition to those negotiated before the award was handed down. [789]

We had previously agreed that any point that we could not reach an agreement on would be submitted to an arbitrator. However, we had one man sitting on that negotiating committee, one D. N. Edwards—who is known here as Nat Edwards—he represented both the mill owners and cabinet manufacturers group on the Alameda County side. He sat in on practically all of the negotiations and just about the time we were getting things to a point where we thought we were ready to sign, he would

(Testimony of Clarence Herbert Irish.)

kick the whole thing into the creek, and as a result when we came to sign the memorandum to submit our unsettled questions to the arbitrator, he would not and did not sign, so when the award was handed down, Mr. Edwards stepped forth with the declaration he had not been a party to the arbitration. He had not signed anything and therefore he was not going to be bound by it, and none of his group was going to be bound by it.

The signatories to that were D. H. Ryan, representing the Bay Counties District Council of Carpenters; members on the negotiating committee, representing Locals 42 and 550; Mr. Ennes, and, I believe, Mr. Gaetjen, for the employers on this side of the Bay. Mr. Edwards represented both the planing mills and cabinet manufacturers on the East Side of the Bay. After the arbitration and Mr. Edwards' declaration with respect to not being bound by it, our negotiating committee might have had one or two meetings with Mr. Edwards to arrive at some sort of adjustment, but by that time matters had reached that stage, it was over the head of any individual local. It had become a district matter and our international officers were called in, I believe Brother Abe Muir, Brother Cambino, and I don't know whether Don Cameron was in or not, and Brother Ryan was in on it, and those men sort of assumed control. It was a matter not of an individual local, but it stepped up to the District Council and general officers. [790]

(Testimony of Clarence Herbert Irish.)

Local 550 voted, if Mr. Edwards did not recognize the \$9 scale, we would strike to enforce it—we did strike. We were out either 12 or 14 days. The international officers were working to adjust the matter long before the strike was called. The award was handed down in August, or somewhere there, we didn't call a strike until considerably later, and during that period there was frantic effort on the part of everybody to get the thing adjusted. There was even a circular letter sent to engineers, architects, contractors, builders, home builders, and everybody else. Several hundred letters circulated throughout the Bay Area, followed up by field men on both sides of the Bay. I was one of the field men on the other side, and we contacted these people and tried to explain the situation to them. It was all explained in the letter, but we thought it might be wise to follow it up.

Before my local union actually went on strike we contacted Mr. Edwards to start with, and he stood pat on it, declaring he was not a party to the arbitration and therefore he was not bound by it, and that none of the group that he represented were bound by it. And, as I say, the District Council had circulated circular letters, stating the facts of the case, to all employer groups, and then it was followed by field men, two on the other side and, I think, two on this side, and the story was told and elaborated on as I described.

As a result of the efforts of Locals 550, 42, mem-

(Testimony of Clarence Herbert Irish.)

bers of Bay Counties District Council and national representatives referred to, an adjustment was arrived at with respect to the wage scale in dispute. The new wage scale eventually arrived at was \$8.50, that is, \$1.06½ an hour. Following the arrival of the new scale, eventually the six counties agreement was entered into.

I did not have anything to do with the negotiating of the 1936 contract. I didn't hold any office with the local union during the time that contract was negotiated or signed. I never [791] was a business agent of my local union.

I do not know of any secret agreement or understanding between any of the local unions or district council or any of the labor defendants in this case and the employer defendants, with respect to Northern millwork or millwork coming from outside the State of California. I know of no instance where any union-labeled Northern millwork was stopped.

Cross-Examination

By Mr. Burdell:

I was a negotiator in 1938 and signed the 1938 contract. I think I was a member of the conference committee in the early part of 1938—the first of the year. I don't know whether my name has ever officially been removed from that committee or not, although I haven't been actively on it for the last year, or year and a half. The conference committee did not meet with the mill owners, it was a nego-

(Testimony of Clarence Herbert Irish.)

tiating committee. The conference committee only met among themselves.

During the period January, 1938, until the middle of 1940, I imagine the representatives of Local 550 met with D. N. Edwards at various times. That is not as an official body, he was one of these kind that would call us up at any time, if he happened to think he could have a new contract that we might submit one to him, but as an official body we didn't meet. I sat in on some of those meetings. I don't recall there were many meetings. They had no bearing on the negotiating committee, because not all of the negotiating committee of either employers or employees were present. Mr. Edwards would cook up some sort of an agreement and would call us up and submit it in the hope we might bring pressure to bear or would influence any of our members to put his proposition over. I suppose he cooked up a dozen or so suggestions. Possibly we had a dozen meetings, but none of the entire committee was present—they were unofficial. It [792] got to the point we discussed everything from soup to nuts—anything that came along, and finally I got tired and didn't go any more, because we couldn't get anywhere.

The conference committee never met with the mill owners. I attended lots of meetings with employers when I was on the negotiating committee. We met every day, sometimes, for two or three weeks. I would say that the man who wrote the

(Testimony of Clarence Herbert Irish.)

minutes of Local 550 for February 17, 1938, made a mistake. It should have been "negotiate" rather than "conference." At that particular, very likely, there was a meeting between the negotiating committee and the mill owners. Our agreement called for opening the agreement on the first of February. We probably had several meetings up to that time. The minutes are correct, except for the fact that they referred to the conference committee instead of the negotiating committee.

I was on the conference committee in October of 1938. I don't recall specifically whether I attended the meeting on October 8, 1938. Exhibit 124-6, the minutes of October 8, 1938, indicate I was present at the meeting.

If the contract with Pacific Manufacturing Company hadn't been made, negotiated, it was just about to be introduced, because I think it was along about that time that we did line up the P. M. with the six counties set-up. Whether or not it had been negotiated, there was definitely discussion about the Pacific Manufacturing Company contract. Pacific Manufacturing Company is in Santa Clara County. It originally consisted of four counties. Four counties came under the jurisdiction of the Bay Counties District Council of Carpenters. After the arbitration and agreement that followed, two more counties were added. [793]

KENNETH DAVIS,

called as a witness on behalf of Defendant, being first sworn, testified as follows:

Direct Examination

By Mr. Carson, II:

I have lived in Portland, Oregon since 1938; before that Tacoma, Washington. My occupation is Executive Secretary of the Northwestern Council, Lumber and Sawmill Workers affiliated with the United Brotherhood of Carpenters. They have been affiliated since 1935. I belong to Local Union 2633, Tacoma; before that Federal Charter 18285, American Federation of Labor. In connection with my position and union affiliation I am acquainted with the operation and organization of the lumber and sawmills in the States of Oregon and Washington.

"Q. I call your attention, Mr. Davis, to the McCleary Timber Company which has been previously testified about in this case, the testimony appears in transcript No. 4 at page 320, and ask you if you know whether or not during the period from 1936 to 1940 that company was organized by the United Brotherhood of Carpenters and had the right to use the label of the United Brotherhood of Carpenters on its woodwork and material.

"Mr. Zirpoli: I object. This is immaterial and irrelevant and not within the issues of the case.

"The Court: Sustained.

"Mr. Carson, II: I would like to make an offer of proof in this connection.

(Testimony of Kenneth Davis.)

"The Court: Yes.

"Mr. Carson, II: The testimony of this witness will show that the McCleary Timber Company, the Weyerhaeuser Lumber Company, the Long-Bell Lumber Company, the Central Door and Lumber Company of Portland, Oregon, the Central Door and Plywood Com- [794] pany of Albany, the C. D. Johnson Company, the Robinson Manufacturing Company at Everett, Washington, the Ewauna Box Company at Klamath Falls and the Algoma Lumber Company at Algoma, Oregon, from the period 1936 to the period of 1940 were not organized by the United Brotherhood of Carpenters, were not working under a contract with any local union or affiliated organization of the United Brotherhood of Carpenters, did not possess the right to use the union label, and none of their products with the exception of the doors of the Central Door and Lumber Company possessed the union label.

"Mr. Zirpoli: I make the same objection, your Honor; it is immaterial and irrelevant and not within the issues of this case.

"Mr. Routzohn: Your Honor please, I am not certain that the full import of this testimony is being considered at this time.

"The Court: I understand it fully. If you wish to add anything to the offer that has been made by Mr. Carson, you may.

"Mr. Routzohn: Merely a statement as to the purpose, your Honor.

(Testimony of Kenneth Davis.)

"The Court: I don't care to hear anything further. I think Mr. Carson has made it quite clear. The objection will be sustained.

"Mr. Carson, II: Q. Mr. Davis, are you acquainted with the facts concerning the organization of the lumber and saw mills located in Oregon and Washington during the year of 1933?

"A. I am.

"Mr. Zirpoli: I make the same objection, your Honor; immaterial and irrelevant.

"The Court: Yes. The answer may go out. The objection is sustained.

"Mr. Carson, II: Q. Are you acquainted with the facts surrounding the organization of the lumber and saw mills in Washington and Oregon in the year 1934? A. I am.

"Mr. Zirpoli: Same objection.

"The Court: The answer will go out.

"Mr. Zirpoli: Immaterial and irrelevant.

"The Court: The objection is sustained.

"Please don't answer until I have an opportunity, witness, to hear the objection, and an opportunity to rule.

"Mr. Carson, II: Without repeating the question, but the same facts as to 1935, 1936, 1937, 1938, 1939 and 1940.

"Mr. Zirpoli: I interpose the same objection, your Honor.

"The Court: Sustained.

"Mr. Carson, II: May it please the Court, we

(Testimony of Kenneth Davis.)

offer this testimony and this witness' testimony will show, in the year 1933 the mills in the Northwest, the lumber and saw mills in the States of Washington and Oregon were independent organizations and not affiliated with either the AF of L or the CIO; that their wages at that time were from 19 to 28 cents per hour; that in the year 1934 these organizations under the NRA affiliated with the AF of L and received Federal charters, at which time their wages were advanced to the minimum wage of 40 cents per hour; that in the year 1935 they became affiliated with the United Brotherhood of Carpenters and received nonbeneficial charters, at which time their minimum wages were increased to 50 cents per hour; that during the year 1940 they asked for recognition in the United Brotherhood of Carpenters under the classification of semi-beneficial locals; upon the recommendation of the president, general president Hutcheson, they were accepted into the organization and their charters were issued on a semi-beneficial class with the semi-beneficial benefits as set out in the constitution of the United Brotherhood of Carpenters and Joiners which is in evidence in this [796] case; that in the year 1935 when they first affiliated with the United Brotherhood of Carpenters, they had approximately 1,900 members, and by 1937 their membership had increased to 35,000 members; that in the year 1937 certain industrial warfare occurred in the States of Washington and Oregon, resulting in splitting

(Testimony of Kenneth Davis.)

up that union by the CIO in that territory, which left approximately 20,000 members in the United Brotherhood of Carpenters and approximately 15,000 went over to the CIO: that in the year 1940 these organizations were all back into the United Brotherhood of Carpenters and had increased their membership to 50,000; that the testimony of this witness will establish that the organization's efforts; that the contracts and efforts on the part of the locals and the District Council in the Bay Counties area was directly allied and a part of the organization's efforts of the United Brotherhood of Carpenters in the Northwest and is interallied with that organization and with the efforts to stop the inroads of the CIO.

"Mr. Zirpoli: All of which testimony, I submit, is immaterial and irrelevant.

"The Court: Do you wish to add anything?

"Mr. Routzohn: I think it is quite material, your Honor, for us to show—

"The Court: Please, Judge; I don't wish to hear any argument. The objection is sustained.

"Mr. Routzohn: All right, sir.

"The Court: I am sorry, but I don't wish to hear any argument."

Thereupon the following minutes of Local Union 42, Exhibit No. 5, were read: [797]

"Under date of February 18, 1936, 'Under New Business. A motion was made to appoint a committee of seven to work in conjunction with the

officers, to draw up plans for a new agreement to be presented to the Mill Owners within the sixty-day period as specified in the present agreement. Motion carried.

"The next one is/under date of February 25, 1936.

"The Court: Mr. Carson, are the minutes paged?

"Mr. Carson, II: No, they are not, they are dated but not pages. Under New Business:

"The Chair appointed a committee to draw plans for a new agreement to be presented to the Mill and Cabinet Association in the near future. The Committee appointed by the Chair being as follows, President Kelly, Vice-President Nelson, Financial Secretary Fallon, Recording Secretary Plato, Treasurer Edwards, Conductor Dave Edwards, Warden Geleich, Trustees Burns and Knowles, B. A. Helbing, Brothers Sammet, Solholt, Reinhardt, Weiss, Fromm, Vetrano and one other member yet to be selected. It was agreed to meet in committee Saturday, February 29, at 2:00 p. m. The Secretary was instructed to inform Local No. 550 to this effect asking them to have their committee meet with this Local on the date mentioned. Instructions complied with.

"Under date of April 14, 1936—

"Mr. Burdell: I am going to object to the further reading of the minutes as immaterial, irrelevant, and incompetent, and self-serving, and hearsay.

"The Court: Overruled.

"Mr. Carson, II: Under Special Order of Business.

"The Chair presented to the membership under Special Business the matter of a new working agreement with the Mills and Cabinet Shop Owners of this District, at the expiration of the present agreement, which terminates June 27, 1936. The Chair, speaking for the Committee which had been meeting in joint session with Local 550 for the past eight Saturdays, presented [798] the recommendations of the Committee of Local 42 as follows: The Committee of Seventeen, representing Millmen's Union No. 42 recommends that a trade agreement be inaugurated in this District to demand the following: No. 1, closed shop in Alameda County. No. 2, A 40-hour week Monday to Friday, inclusive, between the hours of 8 a. m. and 5 p. m. No. 3, Minimum wage scale to be \$1.12½ cents an hour."

"Mr. Burdell: May I make the objection to the reading of the next minutes on the ground that they are immaterial and irrelevant.

"The Court: Overruled.

"Mr. Carson, II: Under date of June 9, 1936, under "Communications." "From Lumber and Sawmill Workers' Union, Local 2616, Oakridge, Oregon: Information on Westfir Lumber Company's method of unfair competition, stating Westfir Lumber Company is operating a 100 per cent. scab

crew. Millmen are cautioned to watch for any Westfir Lumber. Read and filed.

“Under date of June 27, 1936:

“The Joint Committee of Locals 550 and 42 Millmen's Union submitted to their respective locals the recommendations of their deliberations after having met with the Mill and Cabinet Manufacturers of San Francisco and Oakland. The Committee set forth that the Union Shop in Alameda County had been agreed upon and also the matter of hours. The only remaining obstacle being the wage question of \$1.12½ cents per hour. The owners stressing upon the fact they could not pay above the Pacific Manufacturing Company scale in this district.”

“Under date of July 21, 1936, under “Special Business”:

“The proposition of 80 cents and 90 cents for millmen in the counties of San Francisco and Alameda was put before the meeting and declared open for discussion. After being discussed at some length a secret ballot was taken for the purpose of [799] accepting or rejecting the offer of the Mill and Cabinet Owners. The result of the ballots cast being Yes or accepting the offer None; No, or declining the offer, 229.”

“Under date of August 4, 1936, under “Reports and Committees”:

“B. A. Helbing rendered his regular weekly report stating conditions were good and many men

are being paid over the recognized scale of 80 cents. Men were needed in all branches of our crafts, with but few, if any, available. He also reported on the selection of an arbitration board, as yet not established, but has made an effort to contact several prominent men whose names had been submitted and considered. The selection of two men had been agreed upon by both the Mill Owners and by this Union. Those already selected and agreed upon being Judge Walter P. Johnson and Mr. Ledwidge, an attorney, of Berkeley, California. Both of these men had accepted as arbiters.

“Mr. Burdell: Might I ask you again what date that was?”

“Mr. Carson, II: August 4, 1936. Under date of August 25, 1936, under “Special Business”:

“The proposal as tendered by the Mill Owners and Cabinet Manufacturers of Oakland and San Francisco to Locals 42 and 550 having to do with wages and hours was read aloud by the Secretary. But as Helbing and Sammet, comprising the Conference Committee of this Local, and Brother Kelly sitting as Secretary in the meetings, spoke on the proposal offered. Each in turn addressed the meeting, speaking on reasons why, in their opinion, the proposal should be ratified by the membership. The matter was then declared open for discussion by the membership at large. Heated arguments against the acceptance of the proposal were had from

numerous members. It was denounced as being a wage proportionate to truck drivers and not a wage suitable to skilled mechanics. After argument had been heard from many members, the question was asked for and the issue was put up for a vote by secret ballot. Voters were instructed several times in the proper [800] manner to vote for or against the issue. Ballots were distributed, and the votes were then cast, the resulting vote being: Those against accepting proposal, No., 242. Those for accepting proposal, Yes, 90.'

"Under date of September 1, 1936:

"The wage agreement as passed by a majority vote of both locals voting as a unit was hotly discussed off the floor by several members present. A motion was made to call a joint meeting of both locals for next Saturday to reballot on the proposal. The motion was not entertained by the Chair. An Appeal from the decision of the Chair was made and after both arguments were heard the Chair's decision was upheld. Brother Kelly at this point rose to state that any motion made under good of the order was out of order.'

"From the Minute Book of Local 42 for the period from December 7, 1937, to March 28, 1939, Government's Exhibit No. 8, under date of March 1, 1938:

"Brother Byrnes arose to inquire who the consignee was of the C. I. O. lumber, and was informed that some had been stopped in transit to

A. L. Stock & Lumber Co. by B. A. Edwards and the B. A. of Local 22.'

"Mr. Burdell: Will you stipulate what Local 22 is?

"Mr. Carson, II: I will have to inquire. I will stipulate Local Union 22 is a local union of carpenters situated in San Francisco. In order to clarify that situation it is not a local union of Millmen, but of Carpenters, who do construction work in outside buildings and industries.

"Under date of June 28, 1938, "Reports of Committees and Delegates and Business Agents:'

"Brother Kelly reported on the Conference Committee stated Judge Walter Perry Johnson had been accepted" — it is "Excepted" here, but it should be "accepted"—"as arbitrator [801] and that Brother Dave Ryan as our arbitrator. He said that our case would be presented in briefs and suggested Board meet Saturday and Sunday.' "

CHARLES ROE,

called on behalf of the Defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Carson, II:

I am a member of Carpenters' Local 1622. That is a carpenters' local and not a millmen's local. I have belonged to Local 1622 four and one-half

(Testimony of Charles Roe.)

years; before that 36 in Oakland, that is also a carpenters' local. During the period of my membership with Local Union 1622 it became affiliated with Alameda County Building and Construction Trades Council. I hold the office of Assistant representative with Alameda County Building Trades Council. My duties are to aid and assist negotiating committees, cooperate with the various crafts affiliated with the Council.

In connection with my duties as Assistant business representative I was not a member of any negotiating committee or conference committee of either Local Union 42 or 550. I have been in Court since the trial started and heard the contracts testified to. I have not had anything to do with the negotiating, arbitrating or signing of any of those contracts. During the period from 1936 to 1940 I did not serve in any position on behalf of either Local Union 42 or 550.

I recall Mr. Brown who represented the Aladdin Ready-Cut Houses. I had a meeting with him in the early part of 1940. Walter O'Leary was present. I heard Mr. Brown's testimony in Court. I contacted Mr. Brown at his office. I believe his wife [802] was there; Walter O'Leary also. I asked him the methods of business or operations of Aladdin Ready-Cut House Company. He stated they were union but I never heard of them being union, so we continued the conversation and I left and sent him the citation to appear before

(Testimony of Charles Roe.)

the Board of Business Agents of the Building Trades Council. Unfortunately, I was not able to appear, I was out of town. My conversation with Mr. Brown was merely along the line of the organization, the type of work he was doing, and I asked him whether or not the products bore the label. He stated it did. I went further and asked if they carried the label with the studdings, floor joists and so on. He also stated they carried it. I congratulated him on the extent of the use of the label because the Brotherhood never put it on that type of product.

I had a discussion relative to the erection of Aladdin Ready-Cut Houses in this community. I asked him who supplied the labor, whether they subcontracted the work or whether they hired it locally themselves. He stated they subcontracted out, which made it a piecework proposition which was against the rules of the Bay District Council. I stated under that condition they could certainly bring in all they wanted, but we would not furnish them carpenters for it. I absolutely didn't state to Mr. Brown, at any time during that conversation, that his Company would not be allowed to ship their products into this area. I did not ever see Mr. Brown again after that conversation. I merely reported to the Council on having the meeting with Mr. Brown. I gave them an idea of the way he was operating. Of course, I had determined the status of the company and they were still operating one hundred percent.

(Testimony of Charles Roe.)

nonunion, and there was no action taken by the Building Trade Council, it was merely a routine report.

I never had any further conversation with Mr. [803] Brown subsequent to the report to the Board of Business Agents. He has never attempted to reach me and I never heard of him building any houses, so I never bothered to contact him.

I have not heard of, or know of, nor have I been a party to any secret agreement or understanding between any of the labor defendants in this case and the employer defendants with respect to mill-work coming into the State of California from outside the State.

Cross-Examination

By Mr. Todd:

Bay Counties District Council of Carpenters is at this time affiliated with the Alameda County Building Trades Council. I believe they became affiliated in the latter part of 1938, December. It may have been 1937. I think it was December. I was a member of the Committee chosen from the various locals to arrange to affiliate with the Building Trades. I believe it was a copy of the same type of affiliation with which the Bay Counties District Council of Carpenters affiliated with the San Francisco Building Trades Council. Paragraphs numbered 1 to 9 of Exhibit 2-C constitute the conditions under which the Bay Counties District Council

(Testimony of Charles Roe.)

cil of Carpenters affiliated with the Alameda County Building Trades Council.

Cross-Examination

By Mr. Burdell:

I have never been employed by Local 42 or 550. I gathered some information for the Negotiating Committee for a very short time, four or five weeks, for Local 550. You might call my position an investigator, I worked it in with the regular weekly work. That is the only appointment I had for 550. I may have been called a special business agent. It is up to the [804] Recording Secretary to call me special representative or investigator. It was a personal matter.

My meeting with Mr. Brown must have been the early part of March, the early part of 1940. I did not say I went there at the request of Mr. O'Leary. I asked Mr. O'Leary to go along because he had some other business in that part of town and we just made the trip at the same time. No one else went with us. Mr. Brown told us that the material of the Aladdin Company bore the label. I telephoned him and made an appointment, aside from that I haven't contacted him prior to the time I went to see him with Mr. O'Leary. I had never seen or talked with him prior to that time.

I noticed he was running an advertisement in the Sunday Tribune that he had a ready-cut house, union made, and to my knowledge there was no

(Testimony of Charles Roe.)

ready-cut house in the United States manufactured under Union conditions, so I called him up and arranged an appointment with him to find out if such was the case or not. When I called up I merely asked for an appointment to discuss the labor problem. I don't think I called or contacted him and told him I wanted to talk to him about buying a house. I discussed prices with him. He had a series of pamphlets on his desk for various types of houses with prices on them, and I took some with me. In fact, I even put two of them out for bids to compare the cost. That was at my meeting with Mr. O'Leary in March, 1940.

In addition to that I didn't ever personally call him up and tell him I wanted to talk about prices or the purchase of an Aladdin Ready-Cut House. I did get as much information as I could. I used several methods to get it. I got someone else to telephone. I had—it was a sister who was the prospective purchaser. [805]

Thereupon the following minutes were read from the minutes of Local Union 550, Exhibit No. 18:

“Under date of April 24, 1935:

“Brothers Ovenberg and Sholden reported on activities of Local 42 in regards forcing an agreement with Mill Owners.

Under date of May 13, 1935—

“Mr. Burdell: If your Honor please, I am going to object to the reading of the minutes of May 13, 1935 on the ground they are immaterial and irrelevant.

"The Court: What is it about, Mr. Carson?

"Mr. Carson, II: It is in connection with the picture that Mr. Sammet and Mr. Ovenberg gave on the witness stand, showing the background which led up to the 1935 agreement, and then following the 1936 agreement.

"The Court: Overruled.

"Mr. Carson, II: Under date of May 13, 1935: A

"The resolution adopted by Local Union No. 42 of San Francisco regarding demand for better conditions was read.'

"Under date of May 29, 1935:

"Brother O'Leary then spoke on the response of the men in the shops and mills to our appeal for better conditions.

"Under date of June 1, 1935:

"Motion passed that a strike committee be appointed. Brothers O'Leary, Chairman, Bennett, Walsh, Torre, Corriers, Johnson, Larsen and Koerlin. Motion passed that all members of 550 not working be subject to picket duty. Brother O'Leary, Chairman of Strike Committee, then called on the members to meet Monday morning at 7 Carpenters' Hall.'

"Under date of January 2, 1936:

"Motion passed that committee including executive officers be appointed to start plans for our future demands.'

"Under date of March 19, 1936: [806]

"Motion passed that Local 550 notify the Mill

Owners of Alameda County of their desire for a change in our agreement.'

"Under date of November 5, 1936:

"Motion passed that 550 request District Council to enforce the union stamp and label.'

"Under date of August 19, 1937, under the heading "New Business":

"By motion our executive officers instructed to notify the Mill Owners not to buy any C. I. O. building material lumber or millwork as the carpenters will not use it.'

"Under date of September 30, 1937:

"From the Fresno Building Trades Council notice that they will handle no more doors and millwork without the union label.'

"Mr. Burdell: If your Honor please, I move to strike the last minutes read on the ground they are immaterial and incompetent, as they relate to the Fresno Building Trades Council.

"The Court: Denied.

"Mr. Carson, II: Under date of March 31, 1938:

"Delegates Sholden, Ovenberg and O'Leary the Council is to fight the C. I. O. to a finish and are asking each local to donate \$1 per member from their treasury to finance this fight. Brother Irish reported on the Building Trades Meeting and states the Council is prepared to back the Bay Counties District Council in their fight with the C. I. O.'

"From the minutes of Local 550, Government's

Exhibit No. 21, the book starting with the minutes of June 24, 1938; reading from the minutes of January 20, 1939:

“Communications from the Lumber Products Association, Inc. notice of their desire to terminate our contract as of May 1, 1939 and to open negotiations on a new one noted and filed and left in the hands of our Conference Committee.”

“Under date of January 12, 1940: [807]

“The call for a referendum vote by the Six Counties Conference Committee on their recommendations for improved working conditions. The minutes of the Conference meeting of January 6, 1940 were read as was the letter from the Conference Committee requesting the vote. The following brothers responded for the Committee when called upon by the Chair. Brother Ovenberg, in a broad manner outlined the intent and purposes of the committee, stating the committee recommendations were not flat hit the street demands but were something to present to the Mill Owners as having the approval of the membership and it was then up to the Committee to present our case and get the most they can for the mill boys. Brother O'Leary repeated and emphasized a few of Brother Ovenberg's remarks. Brother Kelly, of Local 42, present on other matters, was called upon. Brother Kelly stressed the point that the mill boys should be on their toes at all times for improved conditions and by this continued striving develop the

machinery and perfect the mechanics for achieving our desires thus keeping abreast of the other building crafts on wages and working conditions.

“The vote in favor was called for and Brother Jack Sholden was appointed to count the left side of the house as assistant to the conductor. The count showed in favor of the Committee's recommendation 127, those against none.”

JOSEPH F. CAMBIANO,

called as a witness on behalf of defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Routzohn:

I live in San Mateo and have for about thirteen years; before that in San Francisco and San Jose. I have [808] lived in California practically all my life. I am a millman by trade. I joined Millmen's Union 262 in San Jose on June 6, 1903, and have been a member of the United Brotherhood of Carpenters and Joiners continuously since that time. I transferred into San Francisco during the earthquake and fire for a short period then back to San Jose, and then from San Jose to San Mateo. I am now a member of 262 of the Carpenters' Union.

I have held quite a number of official positions. I was President of 262 for a number of years, was the Field Representative of the Santa Clara Build-

(Testimony of Joseph F. Cambiano.)

ing Trades Council, Santa Clara County; Secretary of that Council; Building Material Manager during the American Plan fight at Santa Clara, San Mateo and San Francisco, and I returned to San Mateo as a Field Representative for Carpenters' 262 until May 3, 1937, when I was appointed an organizer for the United Brotherhood of Carpenters and Joiners of America. I have been serving as organizer since that date, about four and one-half years. I have no particular territory, I am subject to go anywhere I am sent by the General President Mr. Hutcheson, but most of my time is spent in California.

I had to do with some of the efforts that were made in securing a contract with Pacific Manufacturing Company of Santa Clara. I worked fourteen years for that company. I had something to do with the straightening out of differences with Pacific Manufacturing Company. That followed after the trouble that took place in the City of Oakland. I was called in here after an arbitration award was handed down for \$9.00 a day.

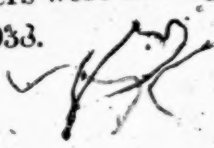
The employers on the Oakland side of the Bay had refused to become a part of it, which resulted with some three hundred members of our Local Union 550 working on that side of [809] the Bay had struck. While they were trying to enforce \$9.00 a day on this side, most of the mills were paying it. Practically all were paying it on this side, including down along the Peninsula, some trouble broke out

(Testimony of Joseph F. Cambiano.)

with Pacific Manufacturing Company, they were paying \$8.00 a day while the group here had a \$9.00 schedule, they had the advantage of \$1.00 a day and they came here and grabbed off practically all of the big work.

Pacific Manufacturing Company had the advantage with the result that the District Council of Carpenters had served notice on some of the contractors here that Pacific material coming into this district would not be permitted to be installed. That caused the Santa Clara Valley District Council of Carpenters to notify the General Office and request that I be sent into this District to settle the mill differences; the reason of my being sent here being I was a millman. I came in around the latter part of September and the result has been reported here time and again, a settlement came about on the \$8.50 per day. That brought the Mill Owners on this side of the Bay down half a dollar, but in order to bring about a settlement of dispute that was in existence for some time I brought in the six counties, which took in Santa Clara, San Mateo, San Francisco, Alameda, Marin and Contra Costa, all under one basic agreement. It was not directly uniform, the intent was it should be as near uniform as we could possibly get it.

I reported to the General Office regarding the difficulties the Pacific Manufacturing Company was having and the others were having with it in August and September, 1933.



(Testimony of Joseph F. Cambiano.)

I forwarded Exhibit No. 42-14, for identification, to the General Office over my signature, which is the letter dated September 10, 1938.

Thereupon the document was introduced in evidence [810] as Defendants' Exhibit 2-D, and the portion relating to Pacific Manufacturing Company was read as follows:

"It is addressed to Mr. William L. Hutcheson, General President, Carpenters' Building, Indianapolis, Indiana, and dated September 10, 1938.

"I also received a wire from Brother Blanchfield, Secretary of the Santa Clara Valley District Council of Carpenters, also a wire from First Vice-President, instructing me to take this matter up in regard to the Pacific Manufacturing Company. Upon my return from Sacramento, I called Brother Blanchfield and made arrangements to meet him in San Jose with the Committee of the Millmen's Union. I have been advised that Brother Ryan, Secretary of the Bay Counties District Council of Carpenters, has notified Mr. H. H. Larson, Contractor on the Redwood City Courthouse, that materials coming from the Pacific Manufacturing Co., of Santa Clara, would not be used in the Bay Counties. For your information a new wage scale of \$9 a day was agreed upon by arbitration for the Bay Counties. This does not take in Santa Clara County. Now, the San Francisco boys are endeavoring to keep out materials from the Pacific Manufacturing Company until such time as they comply with the

(Testimony of Joseph F. Cambiano.)

San Francisco scale. I warned Brother Ryan some time ago that his groups were leading us into trouble. You know Pacific Manufacturing Company have operated for fifteen years open shop. I signed them up two years ago, under a closed shop union agreement. Upon the expiration of the first year, they renewed their agreement for another year, of which I am enclosing a copy for your files. While in San Jose I called Mr. Pierce, President of the Company, over long distance, and I am enclosing a copy of the letter which I received from him. He is going to insist, and he wants an answer, as to what position the Brotherhood is going to take against his materials being shipped in other parts of this State.' " [811]

Following that I received a letter from Mr. Hutcheson assigning me to this District. Exhibit 42-15, for identification, is a copy of a letter received from General President Hutcheson.

Thereupon the document was introduced in evidence as "defendants' Exhibit 2-H", and was read as follows:

"September 20, 1938.

"Mr. J. F. Cambiano,
Hotel Stilwell,
838 South Grand Avenue,
Los Angeles, Calif.

"Dear Sir and Brother:

"We have received a request from the Santa Clara Valley District Council that you be assigned

(Testimony of Joseph F. Cambiano.)

to the Santa Clara and Bay Counties District until such time as the mill situation can be straightened out, and it is my desire that you immediately arrange to proceed to this locality and give attention to the matter.

“For your information, I enclose a copy of letter today written to the Santa Clara County District Council, and by a perusal of same you will note they have been informed therein what would have to be done in the matter, and that a copy of the communication written to them was being sent to you with instructions that the same be used for your guidance in rendering what assistance you could, and as above stated it is therefore my desire that you proceed to that locality and see what can be done along the lines indicated in the enclosed letter.

“Fraternally yours,
General President.” [812]

After receiving that communication I came to the San Francisco District. The very first thing I had to do was get our boys together here and find out the latest development, because I was out of the County. Afterward I proceeded to call on the employers, some of the mill owners on the Oakland side, Pacific Manufacturing Company and also Redwood Manufacturing Company. I did not bother on this side because they had already agreed on the \$9.00 scale. The boys were out thirteen days. As

(Testimony of Joseph F. Cambiano.)

a result of conferences and during my investigation I had discovered there was already a move on foot to compromise the scale at \$8.50. That was brought about by the efforts of Nat Edwards of Oakland. The source of all the trouble was from the Oakland side. In order to settle the argument for all times, after talking it over with the General President, Mr. Hutcheson, he came to the conclusion it was going to be necessary to get a Union agreement in the six counties. That is what I proceeded to do and what was accomplished.

I sent the letter, (Exhibit 42-16, for identification, to Mr. Hutcheson.

Thereupon the letter was introduced in evidence as "Defendants' Exhibit 2-I", and was read as follows:

"October 1st, 1938

"Mr. William L. Hutcheson,
General President,
Carpenters' Building,
Indianapolis, Indiana.

"Dear Sir and Brother:

"As per your instructions, I went to San Jose, and took up the controversy with the District Council of Carpenters and Pacific Manufacturing Co. We held a meeting with Mr. Pierce, Mgr. Pacific Manufacturing Co., and he informs me that he received notice from the Bay Counties District Council, through Brother Ryan, that his materials were not to be used in the Bay Districts. This is creat-

(Testimony of Joseph F. Cambiano.)

ing considerable unrest [813] in Santa Clara County. I also received a copy of the letter and instructions that you mailed to Secretary Blanchfield of the Santa Clara Valley District Council of Carpenters. I personally conveyed these instructions and the contents of the letter to Mr. Pierce. He is of the opinion, and the only reason that he has not renewed his agreement was on our account that the Millmen's wanted to give San Francisco an opportunity to close their negotiations. Mr. Pierce wants to know definitely whether he stands with the use of our label, as it affects not only the Bay districts, but Stockton, Sacramento and Fresno. I will be very happy to go into this matter when we meet in San Francisco. I also attended the meeting of Millmen's Union No. 262, San Jose, and they are very much disturbed over this whole situation, as it involves some 400 members of our organization.

"Tuesday, I contacted Brother Ryan in San Francisco. I am informed that the Oakland side of the Bay are anticipating trouble. I have also been informed by the employers of San Mateo County that they received instructions from San Francisco that after Friday that the label and the men would be taken out of all shops that did not conform with the arbitration award of San Francisco. In this regard, I contacted the Secretary of the Lumbermen's Club of San Mateo—two meetings were held. They informed me that they had not received any information in regard to the change of conditions,

(Testimony of Joseph F. Cambiano.)

and furthermore they were not members of the Planing Mill and Cabinet Manufacturers Association. However, I arranged, in one of these meetings, where they have agreed to enter into an agreement for San Mateo County. Knowing these firms as well as I do, it has been the policy of San Mateo County ever since the big trouble, to negotiate with San Mateo County. I had Secretary Ryan at one of these meetings. I am satis- [814] fied upon my return that I will be able to close the deal.

"Upon my return to Los Angeles Wednesday evening, I received a long distance call from Mr. Pierce of the Pacific Manufacturing Co., also Sec'y Blanchfield, advising me that a number of contractors from San Francisco, customers of the Pacific Mfg. Co. had just notified them that materials coming from Santa Clara would not be installed. I immediately called up Mr. Pierce and also Sec'y Ryan, and advised them to cease notifying contractors in this respect, inasmuch as the Pacific Mfg. Co. has agreed to negotiate and we are complying with your instructions wherein you notified us to inform the Pacific Mfg. Co., as per Section 21, which has to do with giving a 60-day notice for change in their agreements. Brother Ryan has agreed, until such time as I return to San Francisco.

"Thursday a meeting was called by the Cabinet Manufacturers here in Los Angeles for the purpose of closing the agreement, but I find myself in a rather peculiar position—for all these years I have been selling the labels of our Brotherhood, but ac-

(Testimony of Joseph F. Cambiano.)

According to your ruling, dealing with the Pacific Mfg. Co., so far as the Weber Company is concerned this will let them out. However, I have not informed him of your decision until after we meet in San Francisco. In the meantime I am stalling with the closing of this Millmen's Agreement.' "

Section 21 mentioned in the letter has to do with the expiration of the contract. Sixty days' notice must be given for a change in the agreement. It applied here in the Bay District. Pacific Manufacturing Company claimed they had not received a sixty day notice for a change in their contract. The District Council, by an oversight, or some reason or other, let the time elapse. Pacific Manufacturing Company claimed they were going to continue on under the present agreement, that their contract would run along for another year because of the oversight in not giving them the sixty day notice. [815] They claimed they could run for another year at the \$8.00 rate, while the others were paying the \$9.00 scale:

There was a strike called at that time, the first part of October, 1938, in Oakland. We effected an agreement covering all of the six counties, in what we have termed the 1938 agreement. We made a six-county unit out of it instead of a four-county unit. The Redwood Manufacturing Company came in by virtue of an action by Local Union 1956 of Pittsburg.

Letter, Exhibit 42-20, for identification, is a report sent to Mr. Hutcheson, dated October 29, 1938.

(Testimony of Joseph F. Cambiano.)

Thereupon the letter was introduced in evidence as "Defendants' Exhibit 2-J", and was read as follows:

"Mr. Routzohn: "October 29, 1938.

Mr. William L. Hutcheson

General President

Carpenters' Building

Indianapolis, Indiana

"Dear Sir and Brother:

'Reporting on the Mill situation: We have arrived at an agreement with the Pacific Manufacturing Co. of Santa Clara and the District Council of Carpenters. The same has been presented to Local Union #262 last Monday evening, and by vote of 213 to 6, voted to accept the agreement. I am now checking on the uncompleted work, which will determine the date when the new wage schedule goes into effect. As near as I can figure it out at this time, with \$311,000 worth of uncompleted work it will take in the neighborhood of 40 days. The Millmen's Union of San Jose is well pleased with the settlement.

'Have also taken up with the Redwood Manufacturing Co. at Pittsburg, with the result that an agreement has been arrived at, same has been presented to Local Union #1956, which has been approved the agreement by unanimous vote. This agreement will go into effect Tuesday November 1st. [861] "I have attended the meeting of Local Union #42 of San Francisco, and #1956 of Pittsburg, and the Bay Counties District Council; also Millmen of San Jose.

(Testimony of Joseph F. Cambiano.)

"The other has to do with Santa Ana and has no bearing——

"Fraternally yours,

J. F. CAMBIANO."

Prior to visiting Redwood Manufacturing Company and the Pacific Manufacturing Company in October, 1938, I had had a discussion relative to Section 2 of a proposed 1938 contract which followed the award of July, 1938. The first time I came in contact with that particular paragraph was when Mr. Hutcheson came to San Francisco and sat in a meeting with the Employers and the Committee of 42 and 550. He was handed a copy of the contract, and when he came to paragraph 2 he stopped and handed it back and said, "This will never be approved by the General Office", and that is as far as he went into the agreement.

Exhibit 42-22, for identification, is a letter I wrote to Mr. Hutcheson, the general president.

Thereupon the letter was introduced in evidence, marked "Defendants' Exhibit 2-K", and read as follows:

"November 26, 1938

"Mr. William L. Hutcheson

General President

Carpenters' Building

Indianapolis, Indiana

"The portion dealing with this particular case is that which starts on the second page, the last paragraph:

(Testimony of Joseph F. Cambiano.)

'Upon arriving in San Francisco I called at the Bay Counties District Council's office and have been informed that he, Brother Ryan'—

"Brother Ryan" is written in there. I don't know how that got in. I might ask the witness.

"Q. Did you write it in after you dictated the letter? . A. Yes. [817]

"Q. Is that your handwriting?

"A. That's right.

"Q. You wrote in the words 'Brother Ryan,' is that correct? A. That is correct.

"Mr. Routzohn: —"has not signed the Millmen's agreement. It appears now that the mill owners in San Francisco, since you advised them that material coming from Tacoma bearing the label would have to be installed by our members, he finds himself in this position. Paragraph #2, which he has insisted that Oakland be made party of, which I shall quote: 'It is fitting that the wording of the Arbitration Board be here quoted, and its purpose and intent be, and is made part of this agreement.'

"Maintenance of fair labor conditions. It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that is deemed to be for the best interest of the community. In aid of the maintenance of fair working conditions that the parties to this agreement adopt and abide by the business policies of refusing to handle any materials coming from any mills or cabinet shops that is or shall be working contrary to the conditions of said agreement."

(Testimony of Joseph F. Cambiano.)

"The San Francisco Planing Mill owners and Cabinet Fixtures are taking the position that this paragraph must be lived up to or wages brought down to meet those of a lower bracket. During my dealings with the Six-County I had Santa Clara, San Mateo, and Contra Costa county as well as Oakland eliminate this paragraph; but San Francisco took the position, on account of the Arbitration Award, that it was necessary to have it in the agreement. Now Bro. Ryan finds himself in this position, and he states that inasmuch as you informed the Mill Owners that materials coming from Tacoma will be installed by members of our Brotherhood, he is trying to find a way out which will be agreeable to the employers in the Bay District. [818]

"While in Oakland"—

"Does this apply? I don't think it does.

"Mr. Clark: Yes, you can read it.

"Mr. Routzohn: 'While in Oakland Mr. Edwards, Secy. of the Wood Products, informed me that 15 glaziers were ordered out by the Business Agent of the Glazier's Union, and Mr. Edwards has advised them to join the Millmen's Union. Here is the picture: Some time ago the large glass houses attempted to enter into an agreement with the Glaziers wherein they have agreed to pay \$9.68 per day with the understanding that no glazing work to be done in the shops or mills; in other words, all glazing must be done on the job site. They are now receiving \$8.80 per day. I refused to comment on this

(Testimony of Joseph F. Cambiano.)

issue as Mr. Edwards informs me that Board Member Muir has advised him to have these men go into the Millmen's Union. I might state that during the time that I organized the Pacific Manufacturing Co. of Santa Clara and the Redwood Manufacturing Co. of Pittsburg, the glaziers in these two plants were taken into our Brotherhood. Several attempts have been made by the Painters' Union to have these members join their organization. I advised both the men and the employers that these men were to remain in our Brotherhood.

"I am returning Sunday morning to Southern California. Enclosed please find receipt for last week and bill for this week."

Fraternally,

J. F. CAMBIANO."

Letter dated November 29, 1938, was written to me by the General President, Mr. Hutcheson, in reply to the letter which I just read.

Thereupon such letter was introduced in evidence as "Defendants' Exhibit 2-L", and read as follows: [819]

"November 29, 1938

"Mr. J. F. Cambiano
Stillwell Hotel,
Los Angeles, Calif.

"Dear Sir and Brother:

"Re that portion of your report regarding conditions at San Francisco will say that no agreement

(Testimony of Joseph F. Cambiano.)

will be approved by this office containing the quotation of the Arbitration Board.

"Furthermore it seems ridiculous that the Mill Operators in San Francisco should make any reference to the Arbitration Award inasmuch as they were so willing to agree to a lower wage scale than that given by the Arbiter.

"When you have finished with your assignments in the southern part of the State and return to the San Francisco area ~~it is my desire~~ that you take up with the Mill Operators of San Mateo, Santa Clara, Contra Costa and Oakland the signing of the agreement with the elimination of that paragraph, and you can inform Secretary Ryan that you have instructions from the undersigned to do so.

Faternally yours,

GENERAL PRESIDENT."

I recall organizing Redwood Manufacturing Company about '37, in Pittsburg, Contra Costa County. That plant operated for thirty-seven years during the entire existence open shop.

Weber Show Case and Fixture Company is located in Los Angeles. It was organized in the Carpenters' Brotherhood in the last year, and obtained a label January 20, 1941. Prior to that time they did not have a union label. I am very much familiar with the affairs pertaining to Weber Show Case and Fixture Company. I organized that plant about in 1940, and they obtained the label in 1941. It took about three years to organize that plant. For twenty

(Testimony of Joseph F. Cambiano.)

years we have had trouble with [820] them, but finally it was settled here in the last year or so Weber Show Case and Fixture Company has obtained contracts and done work in San Francisco. To the best of my knowledge they have done jobs here in San Francisco during the time they were non-union.

I attended the twenty-third General Convention of the United Brotherhood held in Lakeland, Florida, in December, 1936.

"Q. I will ask you whether or not at that time any action was taken relative to the CIO activities in this territory in interfering with the United Brotherhood unions and endeavoring to organize the planing mills in this district.

"Mr. Clark: Your Honor, we will object to any activities of the CIO, being outside any issue in this case.

"The Court: Sustained."

Thereupon the jury was excused for the purpose of proffering certain documents in evidence.

The following proceedings occurred:

"The Court: My suggestion is, you may make your offer, Judge Routzohn. I have read the document and I think I remember what it contains. You may make your offer for the record, and I will rule.

"Mr. Routzohn: I desire, however, your Honor please, to lay the foundation for the introduction of the letter, unless there can be a stipulation at this time.

(Testimony of Joseph F. Cambiano.)

"The Court: Well, you may do that if you wish.

"Mr. Routzohn: Q. Mr. Cambiano, I hand you what purports to be a circular letter of date August 11, 1937, entitled Special Circular from General Executive Board sent by the General Executive Board of the United Brotherhood of Carpenters and Joiners of America, William L. Hutcheson, Chairman, and Frank Duffy, Secretary, and ask you to state to the Court just what that paper is." [821]

"A. A circular sent out by the United Brotherhood of Carpenters—

Mr. Routzohn: No, no. It is a circular letter?

A. A letter to local unions throughout the United States and Canada.

Q. By "local unions" you refer to local unions, of course, of the United Brotherhood?

"A. Local unions, district councils, State councils and what not.

"Q. You said you were at the convention at the time it was taken up?

"A. That's right.

Q. At that time was there a dual organization known as the CIO, or Committee of Industrial Organizations, that was making any organization efforts and inroads on the locals?

A. There was.

Q. Of the United Brotherhood of Carpenters and Joiners of America? A. There was.

Q. Was that true in this district as well as other districts throughout the Pacific Coast?

(Testimony of Joseph F. Cambiano.)

A. Yes.

Q. Including Washington and Oregon?

A. Yes.

Q. From 1936 on, has there been a constant and continuous organizing effort opposed to the organization efforts of the Brotherhood presented by the CIO organization?

A. There has been.

"Mr. Clark: Your Honor, we will object and ask the answer go out.

"The Court: The answer may go out. What is the objection?

"Mr. Clark: Objected to as irrelevant and immaterial to any issue in this case.

"The Court: Sustained.

"Mr. Clark: I move to strike out the other answers. I thought he was laying a foundation to introduce this circular.

"The Court: I thought so, too.

"Mr. Clark: We move to strike it out. [822]

"Mr. Routzohn: That was my purpose. I was trying to make it doubly sure we were getting the proper foundation.

At this time, your Honor please, we wish to introduce into evidence—let us have that marked for identification—introduce in evidence this circular letter which has been marked for identification Defendants' Exhibit 2-M.

"Mr. Clark: We object, your Honor, on the ground, first, that it doesn't meet the case in chief;

1052 *Lumber Products Assn., Inc., et al.*

(Testimony of Joseph F. Cambiano.)

second, that it is self-serving; and, third, it is immaterial and irrelevant to any issue involved in this case.

"The Court: Objection sustained.

(The circular letter was marked "Defendants' Exhibit 2-M for identification.")

**DEFENDANTS' EXHIBIT 2-M
FOR IDENTIFICATION**

**UNITED BROTHERHOOD OF CARPENTERS
& JOINERS OF AMERICA**

Instituted August 12th, 1881

Carpenters' Building
222 East Michigan Street
Indianapolis

August 11, 1937

**SPECIAL CIRCULAR FROM GENERAL
EXECUTIVE BOARD**

To the Officers and Members of all Local Unions,
District, State and Provincial Councils of the
United Brotherhood of Carpenters and Join-
ers of America.

Greetings:—

Acting on instructions of our Twenty-third Gen-
eral Convention held in Lakeland, Florida, in De-
cember, 1936, a Sub-Committee of the General Ex-

(Testimony of Joseph F. Cambiano.)

Executive Board visited the lumber and sawmill operations in the Northwest. While there, meetings were held with representatives of our District Councils of the Western States, as well as operators who employ our members. The Committee endeavored to get first hand information as to the best manner of handling the organization of this branch of our industry, so as to secure the best possible results for the men working in the woodworking industry, both in wages and working conditions, and the proper relationship of these men in our organization.

The Committee found that there were Communist and adverse influences boring from within for the purpose of trying to destroy the activities of the United Brotherhood, and the building up of a dual International Union of Woodworkers, opposed to the Brotherhood, but before the Sub-Committee could report its findings and recommendations to the General Executive Board, the C. I. O. had already issued a charter, or certificate of affiliation, dated July 20, 1937, to a dual organization called, "International Woodworkers of America."

This dual organization has already been trying to induce our Local Unions and members to secede from the United Brotherhood, and so to combat this dual movement it becomes necessary to notify all our Local Unions, District, State and Provincial Councils of the Brotherhood that our members

(Testimony of Joseph F. Cambiano.)

must not handle any lumber or mill work manufactured by any operator who employs C. I. O. or those who hold membership in an organization dual to our Brotherhood.

Do not be misled by any newspaper articles that the entire lumber and sawmill industry has gone C. I. O. Just the opposite is the truth. We have thousands and thousands of loyal members in the Northwest who are battling for the United Brotherhood of Carpenters and Joiners of America, and will continue to do so, and it makes it absolutely necessary for all our members to give them their support by refusing to handle material coming from C. I. O. operations.

The C. I. O. has challenged us, and we must meet that challenge without hesitation. Therefore, you are instructed to appoint a committee to inform your employers and the lumber dealers that our members will refuse to handle any dual or C. I. O. products.

A list of operations using this class of labor will be sent to you from time to time as the situation may develop, but appoint your committees at once so that our employers will be informed in plenty of time to protect themselves before placing their orders for any lumber or millwork.

Kindly comply with these instructions at once and inform the General President of the names and addresses of your Committee so that the proper information can be sent direct to them as well as to you, in order to secure quick action.

(Testimony of Joseph F. Cambiano.)

Let your watchword be "No C. I. O. lumber or millwork in your district" and let them know you mean it.

Fraternally yours

GENERAL EXECUTIVE
BOARD

WM. L. HUTCHESON

Chairman

FRANK DUFFY

Secretary

"Mr. Routzohn: Q. I hand you a paper writing of date August 21, 1939, which has been marked for identification Defendants' Exhibit 2-N, and ask you to state to the Court just what that paper is.

"A. This here is the agreement sent out by the Congress of the Industrial Organizations from Washington, D. C., a letter to all of the contractors in California.

"Mr. Routzohn: I would like to have your Honor see this.

"The Court: Yes.

"Mr. Routzohn: That agreement is sent by whom and in what capacity?

"The Court: This is headed "For Release Morning Papers Wednesday, July 26, 1939."

"Mr. Routzohn: Attached to that, your Honor, is—

(Testimony of Joseph F. Cambiano.)

"The Court: "Rules and Regulations of the United Construction Workers Organizing Committee" is attached to the newspaper release.

"Mr. Routzohn: Yes, the proposed agreement.

"The Court: Did you see it? [823]

"Mr. Clark: I just saw the front page.

"The Court: Have you an objection?

"Mr. Clark: I thought it was a newspaper release.

"Mr. Routzohn: That is signed by A. D. Lewis.

"A. That's right.

Q. Who is A. D. Lewis?

A. A brother of John L. Lewis.

Q. What is his position?

A. President—

"Q. A. D. Lewis, Denny Lewis.

"A. He is supposed to be president of the construction department of the CIO.

Q. The construction department of the CIO, how does that compare with the organization of the United Brotherhood of Carpenters and Joiners of America?

"Mr. Clark: We object to this line of questioning as immaterial and irrelevant to this case, as to any comparison between a setup of the CIO and the A. F. of L.

"The Court: Sustained.

"Mr. Routzohn: Q. Is it or is it not a dual organization to your own organizations that are defendants in this case?

"A. Positively—

(Testimony of Joseph F. Cambiano.)

"Mr. Clark: We object to that, your Honor, and move the answer go out. Object to it as immaterial and irrelevant.

"The Court: It may go out. Objection sustained. Has it been marked?

"Mr. Routzohn: I wish to offer this in evidence, as well as Exhibit 2-M.

"Mr. Clark: We object to 2-N on the ground it is immaterial and irrelevant and appearing, the first part of it, in a newspaper release and the other, the rules and regulations of the CIO, which is not a party in this case, not involved here; does not meet the issues in the case.

"The Court: Sustained.

"Mr. Routzohn: Q. Well, those rules and regulations were [824] a part of the organization efforts of the CIO, were they?

"A. That's right.

"Mr. Clark: We object to that and move it go out. Object as immaterial and irrelevant.

"The Court: The answer will go out. Objection sustained.

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(Testimony of Joseph F. Cambiano.)

**DEFENDANTS' EXHIBIT 2-N FOR
IDENTIFICATION**

(Clamped): Aug. 21, 1939, Rec'd.

Congress of Industrial Organizations

1106 Connecticut Avenue, N. W.

Washington, D. C.

District 3582

For Release morning papers, Wednesday, July 26, 1939

President John L. Lewis of the Congress of Industrial Organizations today announced the formation of the United Construction Workers Organizing Committee, for the purpose of organizing the workers in the construction industry.

The Chairman of the new CIO committee is A. D. Lewis, Assistant to the President of the United Mine Workers of America. The other members include Philip Murray, Chairman of the Steel Workers Organizing Committee and Vice President of the United Mine Workers; James B. Carey, President of the United Electrical, Radio & Machine Workers and Secretary of the CIO; R. J. Thomas, President of the United Automobile Workers of America; and Sherman H. Dalrymple, President of the United Rubber Workers of America.

Headquarters will be opened August 1 in Washington, D. C., on the fifth floor of the United Mine Workers Building.

(Testimony of Joseph F. Cambiano.)

In announcing the formation of the United Construction Workers Organizing Committee, President Lewis declared:

"There are some three million workers employed in the construction industry, of whom less than one-third are organized.

"Since the CIO was formed, we have received thousands of requests from individuals and groups of construction workers throughout the country asking for organization and affiliation with the CIO.

"These requests have come to us because the construction workers desire a modern form of organization which will bring the benefits of collective bargaining to all the workers, will eliminate jurisdictional disputes and will improve their wages and working conditions.

"Acting under the constitution of the Congress of Industrial Organizations, which calls for the effective organization of the working men and women of America into labor unions for their mutual aid and protection, the executive officers of the CIO have therefore decided to establish the United Construction Workers Organizing Committee.

"The work of this Committee will be directed by Chairman A. D. Lewis, who will be authorized to issue charters to construction workers who desire to become affiliated with a modern industrial union in their industry.

"A large number of Local Industrial Unions

(Testimony of Joseph F. Cambiano.)

have already been chartered by the CIO in this industry and they will be transferred to the UCWOC at once, to compose its initial membership.

"The United Construction Workers Organizing Committee will be organized on an industrial basis. Dues will be \$1.50 per month for all members in all classifications of employment in the construction industry. No initiation fees are being charged.

"The aim of the United Construction Workers Organizing Committee will be to organize all construction workers into a powerful industrial union which will abolish the many evils and abuses that have beset the industry in the past and improve wages and working conditions of all those employed in it.

"Special provisions will be made by the Committee for the elimination of unauthorized strikes, jurisdictional disputes and lockouts, and for the peaceful adjudication of labor disputes.

"A system of transfer cards will be arranged for the benefit of union members, and arrangements will be made under the union agreements for training skilled mechanics so that workers may not have to learn their trades on non-union jobs.

"The declared objects of the United Construction Workers Organizing Committee are as follows:

"(1) To unite into one organization, regardless of creed, color, nationality or classification of em-

(Testimony of Joseph F. Cambiano.)

ployment, all workers in and around construction work.

“(2) To increase wages and improve the conditions of employment of the members of the organization and to secure through proper negotiations joint agreements covering wages, hours and working conditions of its members.

“(3) To stabilize the construction industry through the elimination of unauthorized strikes, jurisdictional disputes and lockouts, and to provide for adjudication of disputes arising between employers and employees in the industry.

“(4) To provide for the education and better living conditions of our members and their families and to obtain a greater participation in the economic and political affairs of our country.”

UNITED CONSTRUCTION WORKERS ORGANIZING COMMITTEE

Affiliated with C. I. O.

Fifteenth and Eye Streets, N. W.

Washington, D. C.

Aug. 21, 1939, Rec'd

RULES AND REGULATIONS OF THE UNITED CONSTRUCTION WORKERS ORGANIZING COMMITTEE

Innumerable requests from construction workers throughout the United States for affiliation with the C. I. O. have been received and given

(Testimony of Joseph F. Cambiano.)

consideration by the C. I. O. In order to provide an opportunity for these workers to join an Organization of their own choosing, free from the many evils that have beset the industry in the past, excessive dues and exorbitant initiation fees, the C. I. O. has organized the United Construction Workers Organizing Committee. The Committee herewith promulgates the following Rules and Regulations which shall govern the activities of the Organization.

(1) The objects of the Organization shall be:

To unite into one Organization, regardless of creed, color, nationality, or classification of employment, all workmen employed in and around construction work;

To increase wages and improve the conditions of employment of the membership of the Organization and to secure through proper negotiations joint agreements covering the wages, hours and working conditions of its members;

To stabilize the construction industry through the elimination of unauthorized strikes, jurisdictional disputes and lockouts, and to provide methods for adjudication of disputes arising between employer and employees in the industry; and,

To provide for education and better living conditions for our members and their families and to obtain a greater participation in the economic and political affairs of our country.

(2) This Organization shall be known as the

(Testimony of Joseph F. Cambiano.)

United Construction Workers Organizing Committee.

(3) Charters shall be issued to Local Unions of construction workers where, in the opinion of the Committee, it is to the best interests of the Organization to do so.

(4) Any ten individuals eligible for membership may apply to the Committee for a charter, which may be granted upon the payment of a proper fee to cover the purchase of necessary supplies.

(5) The officers of a Local Union shall be composed of a President, Vice-President, Recording Secretary, Secretary-Treasurer, and a Board of Trustees composed of six members, representative of the different classifications of employment in the construction industry.

(6) The duties of the President shall be to preside over all meetings of the Local Union and to conduct the meetings in accordance with Robert's Rules of Order. He shall represent the Local Union, as hereinafter provided, in the adjudication of grievances and in the making of contracts and perform such other duties as may properly be assigned him by the Local Union. He shall make appointments to committees, and he shall also appoint such Job Stewards as may be necessary, subject to the approval of the Board of Trustees, and countersign all checks authorized by the Local Union.

(Testimony of Joseph F. Cambiano.)

(7) The duties of the Vice-President shall be to assist the President in all of his functions and to assume his position in case of the President's absence.

(8) The duties of the Recording Secretary shall be to keep the minutes of the meetings of the Local Union and handle all of the official correspondence and such other duties as may hereinafter be provided. He shall also have custody of the Local Union seal, and shall be held responsible for any misuse of same.

(9) The duties of the Secretary-Treasurer shall be to take charge of all of the monies and property of the Local Union subject to the approval of the Board of Trustees. He shall be responsible for the collection of all monies due the Local Union from its members or others, and he shall receive from the Business Agent, or other authorized agents of the Local Union, all monies collected by them and due the Local Union for monthly dues and initiation fees, and keep an itemized record of all incoming and outgoing money and of accounts receivable and payable. He shall sign all checks for the disbursement of the funds of the Local Union. He shall transmit, not later than on the tenth day of each calendar month, to the Comptroller of the Committee, all monies due the National Organization from the Local Union on account of the monthly membership dues and initiation fees collected during the preceding calendar month. He

(Testimony of Joseph F. Cambiano.)

shall also be responsible for the transmittal to the Comptroller of the Committee of any other funds owing to the National Organization when due.

A statement shall be rendered accompanying the transmittal of membership dues and initiation fees, showing the number of monthly dues payments and initiation fees collected by the Local Union, including a statement showing the financial condition of the Local Union, as of the last day of the preceding calendar month. He shall be bonded under a surety bond approved by and in the amount determined by the Committee.

(10) The Board of Trustees shall assume jurisdiction over all of the property of the Local Union and shall be held responsible for the proper conduct and the handling of the finances of the Local. The Board of Trustees shall also, semi-annually, audit the accounts of the Local Union and file copies of its report with the Local Union and the Committee.

(11) The Local Union, with the approval of the Committee, may elect from its membership a Business Agent, who shall devote his full time to the duties of his position and who shall be paid at a rate to be determined by the Local Union. This rate must not exceed \$60.00 per week with authorized expenses. Such expenses must be incurred within the jurisdiction of the Local Union, except that authorization may be given by the Local Union to the Business Agent to attend meetings outside

(Testimony of Joseph F. Cambiano.)

of its jurisdiction and to incur expenses in connection therewith. His duties shall be to adjudicate any grievances that may be referred to him by the Local Union or Job Stewards hereinafter provided for. He shall be charged in conjunction with the Job Stewards with the collection of membership dues and initiation fees each month and turn over all such monies collected to the Secretary-Treasurer of the Local Union. He shall ascertain and keep in constant touch with construction activities within the jurisdiction of his Local Union, attempt to secure employment on any construction job for his membership, and make a constant effort to prevail upon any construction workers within the limits of his jurisdiction to join the United Construction Workers Organizing Committee. He shall be bonded under a surety bond approved by and in the amount determined by the Committee.

(12) A Job Steward must be appointed on each and every construction job by the President of the Local Union, subject to the approval of the Board of Trustees. The Job Steward, in conjunction with or in lieu of the Business Agent, shall accept applications for membership, collect initiation fees and dues and adjudicate with the proper employer officials any grievances that may arise upon the job.

(13) The Committee shall have the right to determine the date of imposition and the amount of the initiation fee to be charged to individuals

(Testimony of Joseph F. Cambiano.)

making application for membership in the United Construction Workers Organizing Committee.

(14) When the Committee determines that an initiation fee shall be charged, the Committee shall have full authority to determine the disposition of the initiation fee.

(15) Dues to the United Construction Workers Organizing Committee shall be \$1.50 per month for all members, \$.50 of which shall be retained by the Local Union and \$1.00 forwarded to the Comptroller of the Committee.

(16) The Secretary-Treasurers of the Local Unions shall be provided with dues books and monthly statements by the Comptroller of the Committee at cost, plus handling charges. The Secretary-Treasurers of the Local Unions shall be held accountable for all monthly dues stamps and dues books. Dues books shall be carried at all times by members of the Organization, in order that they may be inspected when requested by union agents, or other authorized persons.

(17) Monthly dues to a Local Union are due upon the first day of the month, and a dues stamp shall be issued upon payment.

(18) The Committee shall have the authority to establish State or Regional Departments, under a Director to be appointed by the Committee. Such Director shall be responsible for all of the organizing and legislative work within his jurisdiction and shall work under the immediate direction of the Committee. The State Director shall assist Local

(Testimony of Joseph F. Cambiano.)

Unions in the making of agreements and contracts and shall act as hereinafter provided in the adjudication of disputes when they are officially referred to him by either the Committee or the Local Union.

(19) No Local Union shall issue a strike notice without first receiving authority to do so from the United Construction Workers Organizing Committee.

(20) The Organization shall make every effort to stabilize labor conditions in the construction industry and eliminate strikes and stoppages of work during the adjudication of grievances. It is therefore suggested that the following be inserted, where possible, in all contracts made between Local Unions and contractors, or contractor associations:

“Should differences arise between construction workers and the contractor, in regard to wages, working rules and other conditions of employment, or should any local trouble of any kind arise upon any job, there shall be no suspension of work on account of such differences, and an earnest effort shall be made to settle such differences immediately: First, between the aggrieved party and the construction foreman; Second, through the Job Steward and/or the Business Agent and the construction foreman; Third, through a Committee, consisting of the President of the Local Union, Job Steward and/or the Business Agent, and the General Manager of the construction company; Fourth,

(Testimony of Joseph F. Cambiano.)

should the Committee and the General Manager of the construction company fail to agree, the matter shall be referred to the State Director, who shall make every effort to adjudicate the dispute with the construction company.

"Should this procedure fail, the State Director, on behalf of the Union, may agree with the construction company upon the selection of an umpire to decide the case. At any stage of the procedure, the Committee, or its designated agents, may participate in the adjudication of the dispute. Pending the adjudication of any dispute, construction workers shall not cease work. When a joint decision is reached at any stage of the procedure, it shall be binding upon both parties thereto and shall not be subject to reopening by either party, except by mutual agreement."

(21) In order to eliminate so-called jurisdictional disputes between the several classifications of employees upon any construction job, every effort should be made to establish a procedure whereby any workman doing work, for which a scale of wages is provided, shall be paid either his regular scale of wages, if the work performed by him calls for a lower scale, or he shall be paid at the higher scale if the class of work calls for a higher scale of wages. This rule may be amplified in any agreement between a Local Union and any contractor or contractor association.

(Testimony of Joseph F. Cambiano.)

(22) The Committee recognizes the necessity for the proper and adequate training of journeymen workmen in the construction industry. Local Unions shall make rules to govern the admission into Local Unions with full membership workers in helper classifications and the employment of helpers upon a practical basis on all construction jobs.

(23) All Local Union officers, Business Agents and other permanent committees, shall be elected at the last meeting in June of each year by a majority vote of the members present at the meeting and shall serve until their successors are elected and qualified, at which time all money, official records and documents, and all property belonging to the Local Union, shall be turned over to such successors. No person shall hold two elective offices in any Local Union at the same time. This rule shall also apply to elected Business Agents.

(24) Except in newly organized Local Unions, all officers and Business Agents to be eligible for election must attend one-half of the meetings of their Local Unions for six months prior to the election and must be employed in or around construction work, or by the Organization.

(25) The Committee shall have the authority to remove from office any officer or agent of any Local Union whom it shall find guilty of malfeasance, or misfeasance, or misappropriation of funds, and such person shall be disbarred from holding any office in the Organization thereafter, until all rights

(Testimony of Joseph F. Cambiano.)

and privileges are restored to him by the United Construction Workers Committee. Such persons shall also be held accountable for the return of the funds so misappropriated.

(26) The Committee shall have the right to audit and inspect all accounts and other books and records of any officer or agent of the Local Union and of the National Organization.

(27) All Local Unions shall be supplied transfer card books by the Comptroller of the Committee at cost, plus handling charges. Transfer cards shall be issued to members wishing to transfer their membership from one Local Union to another. Transfer cards shall be signed by the President, the Recording Secretary and the Secretary-Treasurer of the Local Unions; and shall bear the seal of the Local Union. No card shall be issued to any member unless all dues, initiation fees, and assessments are paid in full to the date of issuance. No transfer card shall be recognized by any Local Union, except transfer cards supplied by the Comptroller's office.

(28) Any member of a Local Union securing a job under the jurisdiction of another Local Union shall immediately transfer his membership to the Local Union having jurisdiction over the construction work where he is employed.

(29) Any member who is three months in arrears in his dues or assessment shall automatically be dropped from the membership rolls of the Organization.

(30) The Committee, at its discretion, may at

(Testimony of Joseph F. Cambiano.)

any time appoint an Organizer to act as a Business Agent for any Local Union. The Local Union must thereupon recognize such Business Agent as the official representative to carry out the duties of the Business Agent as hereinbefore set forth.

(31) The Committee shall have the authority to suspend or revoke the charter of any Local Union, after a full investigation and hearing, because of violations of or failure to comply with any of the Rules and Regulations or minor objectives of the National Organization.

In any Local Union should disband or secede, or should its charter be revoked or suspended, then the charter and all supplies, funds, and real and personal property and collective bargaining agreements, in its possession, or to which it may be entitled, shall be taken over by the Committee, provided that any remaining members of such Local Union in good standing are given appropriate transfer cards.

(32) Local Unions shall comply with all instructions that may be issued by the Committee from time to time, in regard to the use of forms and the maintenance of financial and other records.

(33) These Rules and Regulations may be changed from time to time by, and in the absolute discretion of the Committee. The Rules and Regulations shall govern all Local Unions and agents and employees of Local Unions, State and Regional Departments, and of the National Organization. Local Unions may make rules or adopt procedure

(Testimony of Joseph F. Cambiano.)

to govern themselves, provided that they are not in conflict with the Rules and Regulations of the Committee.

A. D. LEWIS

Chairman

United Construction
Workers Organizing
Committee

GARDNER H. WALES

Comptroller

United Construction
Workers Organizing
Committee

"Mr. Routzohn: Another release your Honor please, and a letter, a circular letter which we will have marked Defendants' 2-0 for identification.

"Mr. Clark: Is this along the same line?

"Mr. Routzohn: Yes.

"Mr. Clark: We object on the same ground.

"Mr. Routzohn: Except that it involves—

"Mr. Clark: Well, it is a CIO circular, isn't it?

"Mr. Routzohn: Yes.

"Mr. Clark: We object on the same ground.

"The Court: Sustained.

"Mr. Routzohn: Q. I hand you now Defendants' Exhibit 2-0 and ask you to state just what that is so we can get it in the record, is all.

"A. This is the circular that was circulated in

1074 *Lumber Products Assn., Inc., et al.*

(Testimony of Joseph F. Cambiano.)

some of the Congress of Industrial Organization
the construction industry.

"Mr. Routzohn: We offer Defendants' Exhibit
2-0.

"The Court: Is it along the same line?

"Mr. Clark: We object to it, your Honor; it is
a CIO circular.

"Mr. Routzohn: Yes.

"The Court: Objection sustained.

**DEFENDANTS' EXHIBIT 2-0 FOR
IDENTIFICATION**

Sacramento

C.I.O.

(Copy)

Phone Capital 5044

EDWARD J. CHERRY, President

J. T. DUDLEY, Secretary

**UNITED CONSTRUCTION WORKERS
UNION, LOCAL 66**

Affiliated with Congress of Industrial
Organizations

821½ J Street

Sacramento, California

January 18, 1940

To all Contractors and Builders

Gentlemen:

We wish to call to your attention the fact that
the United Construction Workers Organizing Com-

(Testimony of Joseph F. Cambiano¹)

mittee has been organized on a nationwide scale.

We are attempting to eliminate jurisdictional disputes in the building industry by having all members of a construction crew belong to ONE union, instead of 26 or 27 different crafts, with the attendant friction between these crafts. It is our opinion that under this system, building costs can be considerably reduced and, that this reduction will not only cause an increase of business to the contractor but, will make for steadier employment for the men. The value of having an industrial union, whereby men can move to any part of the job without fear of a jurisdictional dispute being caused, along with the special provisions which have been made for the settlement of grievances, can be readily seen by any one familiar with construction work.

We are pleased to announce that the Sacramento Local #66 of the United Construction Workers Union (CIO) has available, and can furnish competent men for all branches of the construction industry.

Further information may be obtained at the above address, by telephone or letter.

Very truly yours,

EDWARD J. CHERRY,

President

ROBERT CHITWOOD,

Secretary

(Testimony of Joseph F. Caffabiano.)

(Copy)

CONSTRUCTION AND BUILDING TRADES WORKERS

ATTENTION!!!

Local #66 of the United Construction Workers Union is making a drive for membership on the following points.

1. No initiation fees at present.
2. Low dues
3. Job protection, which really protects the workers
4. All crafts in ONE union. This eliminates jurisdictional disputes, and the necessity of paying a new initiation fee everytime you want to change your job.
5. A chance for every worker to go to a higher paid job, if he is capable of handling it.
7. Special provisions for handling grieyances.
8. No "kick-back" of your wages.
9. Organizing workers instead of the Boss.
10. Higher wages
11. Chance to transfer to any CIO union without having to pay transfer fees or new initiation.
12. Closed shop contract with the Low Cost Housing Builders of Sacramento. More contracts coming up in the near future.
13. A Union instead of an employment agency.

These are some of the points on which we are building this union. Further information will be

(Testimony of Joseph F. Cambiano.)

given those interested at the meetings of Local #66 which are held every 2nd and 4th Wednesday of the month. Next meeting is, January 24th, 1940 at 7:00 P.M. at 821½ Jay Street.

Organizing Committee

Local #66 UCWOC

821½ Jay Street

Sacramento

(Copy)

January 1, 1940.

For Immediate Press Release

The Sacramento Citizens Committee on Slum Clearance and Low Cost Housing was formed in January 1939. Since its formation a broad study has been made of housing conditions, especially, in Sacramento County. We have found that for many years the building industry has not been building homes that can be purchased by families with modest or low incomes. The result is that the United States is Millions of homes behind in a building program that would decently house our people. For the richest country in the world, this lack of decent homes is a national disgrace. Certainly we have the materials, and the labor necessary to decently house our people. Our present administration through the United States Housing Authority has made wonderful progress not only in bringing the facts before the people, but also in actual cleaning-up of the slum districts.

(Testimony of Joseph F. Cambiano.)

Unfortunately through lack of cooperation in the last session of Congress this program has been badly delayed, and powerful interests are using every effort to sabotage the program completely.

The one item which can contribute most toward a return to prosperity and jobs for the unemployed is a building program. The demand for building material reaches into many industries, such as lumber, steel, cement, brick, and other materials too numerous to mention. Due to lack of finance for the U.S.H.A. little could be accomplished at this time by that body. We began a study of what might possible be done in some other way. We found that although the reduction of interest rates has been accomplished by the F.H.A., that with possibly a few exceptions, decent homes are yet beyond the reach of those with low incomes. We have come to the conclusion that four major items are mainly responsible for this conditions, they are: (1) High cost of material (2) High Contractors profits (3) High cost of labor due to jurisdictional disputes of craft unions (4) Profits of Real Estate operators (Number 1) can be substantially reduced by buying materials in large quantities (Number 2) Contractors profits will be *elinated*. (Number 3) Reduction of labor costs by using members of the C.I.O. United Construction Workers Union who will be paid the prevailing wage scale and possibly higher, but through the elimination of jurisdictional disputes will make it possible to pay

(Testimony of Joseph F. Cambiano.)

higher wages while at the same time making for more efficient building progress, because of the nature of industrial unions. (4) Real Estate Sales commissions can be eliminated.

Actual figures prepared by experts convince us that by taking advantage of these things, we can build 4 room, 2 bedroom homes that will sell under F.H.A. terms for a small down payment and less than \$17.00 per month, payments on the house.

Compared with the rent being paid for much less desirable homes in this district, we are convinced there will be a great demand for such homes and will ultimately result in the elimination or remodeling of places in which these people now live. Fortunately, in the Sacramento District there is land available at a reasonable price which can be utilized for a low cost housing project. A group of citizens who believe in decent homes, are cooperating to put the plan in effect. A tract of land has been secured. Our building crews will start to work the week of January 1st. Homes priced under \$2000.00, with payments approximately \$17.00 per month, and a small down payment, will then shortly, be available. These modern homes will be within the range of the small regular income groups. }

We are not *condemning* or criticizing the contractors or Real Estate firms. We know their functions are necessary to a community. However, ~~they~~ have failed to produce homes for the class of

(Testimony of Joseph F. Cambiano.)

people who need them more than any others. In order to make this plan successful these profits must be eliminated.

We do not contend that this plan, even if put into effect on a nation-wide scale would be a solution to the whole housing problem. This plan due to F.H.A. regulations can only apply to those who have a sufficient steady income to qualify for the F.H.A. loan. For those who have no regular income, are another problem and one that will take governmental action to solve.

We also wish to call attention to the fact that such a program could be used by States and Counties. The money being paid by States and Counties to house relief clients would in a short period of years liquidate the cost and at the same time would move these people from the slums into decent homes. The *people* sponsoring this program have not the slightest idea of a profit. They propose to build homes that will be within the reach of those with low incomes, and at the same time create jobs for unemployed construction workers.

We cannot too strongly stress the importance of the cooperation and help of the House Committee of the National Congress of Industrial Organizations (CIO).

President Roosevelt has with truth, said, that one-third of our nation is ill-housed. We say something can be done about it, and we are going to

(Testimony of Joseph F. Cambiano.)

make a determined effort to do something in our own County.

(Signed) J. T. DUDLEY,

uopwa-34

eje.

Secretary-Treas.

Sacramento Industrial Union
Council (CIO)

Chairman

Sacramento Citizens Com-
mittee on Slum Clearance
and Low Cost Housing

Address: Sacramento Industrial Union Council,
821½ Jay Street, Sacramento, California.

“Mr. Routzohn: Q. I hand you a paper writing which has been marked Defendants' Exhibit 2-P for identification and ask you to state what that is, Mr. Cambiano.

A. A communication from the General Contractors Association of Contra Costa County. [825].

Q. Having to do with the CIO affairs?

A. Yes.

Q. In this very district in Contra Costa County?

A. Yes, Sir.

“The Court: Has it been marked?

“Mr. Routzohn: It has been marked for identification. I wish to offer it in evidence at this time, your Honor.

“Mr. Clark: We will object, your Honor, on

(Testimony of Joseph F. Cambiano.)

the same grounds; the same type of offer that he has made, CIO.

"The Court: Sustained. Is that all?

"Mr. Routzohn: Except a statement that I would like to make at this time, if your Honor please.

"The Court: Very well.

"Mr. Routzohn: I will be very brief. That is what my individual thought has been throughout the trial of this case that there might be some claim made by the counsel for the prosecution that the evidence in this case does not show, or there is a lack of evidence on our part to the effect a labor dispute existed throughout the period of the indictment.

"The Court: I don't care to hear any argument on that now.

"Mr. Routzohn: It is merely to show that there was a potential labor dispute existing in addition to the one with the employers that are involved in this case.

"The Court: All right. Well, I, of course—

"Mr. Routzohn (interrupting): Your Honor, I have no ulterior motives at all.

"The Court: Oh, I appreciate that.

"Mr. Routzohn: Incidentally, there have been some—in addition to that, there has been a dual organization here and dual efforts which accounted for the refusal to handle, if your Honor please, a great deal of work that came from the North-

(Testimony of Joseph F. Cambiano.)

west, many of the things that have been testified to in this case.

"The Court: Yes. Well, have you finished with your evidence? [826]

"Mr. Routzohn: Yes, your Honor."

DEFENDANTS' EXHIBIT 2-P FOR
IDENTIFICATION

(Copy)

GENERAL CONTRACTORS' ASSOCIATION
OF CONTRA COSTA COUNTY

Richmond, Calif.,

April 29, 1940.

My Dear Member:

This is your official notice of a Special Meeting to be held in Martinez Thursday, May 2nd, in Memorial Hall, 7:30 p. m.

The time has come, we must make up our minds as to what we are to do about a Labor Agreement for the coming year, as you know our present agreement with A. F. of L. expires this coming May 14, 1940.

President *Enes* is very anxious to have the full membership attend this meeting; he has also requested me to ask each member to bring as many Contractors as he can as guests. You certainly know some that are not members; bring them with you.

(Testimony of Joseph F. Cambiano.)

The C. I. O. has offered a very attractive agreement to this Association and they are very desirous of having the agreement.

You know what the set up is now. Each craft has its own Union with each craft working different hours and for a different wage.

Under this other arrangement all work would be carried on with the same hours per day with all crafts in the same Union and the Contractor would be able to hire Direct any man or craftsman that he so desired.

In order that we don't make any costly errors in our bargaining, it is important that you attend this meeting and bring a few Contractor friends with you. In this manner we will be able to determine what the wish of the majority is and be able to make a wise decision.

Thursday, 7:30 p. m. War Veterans Memorial Hall, Martinez, California, May 2, 1940.

Sincerely yours,

Secretary

Thereupon the proceedings were resumed before the jury, as follows:

I am one of the defendants in the case. I didn't ever enter into any agreement, verbal or otherwise, with anyone, employers or employees, to prevent the flow through interstate commerce of woodwork.

(Testimony of Joseph F. Cambiano.)

and patterned lumber into the Bay Area. I positively do not know and have not heard of any agreement of any kind, verbal or otherwise, made by anyone, any of the union men or any of the defendant employers in this district. There has not been, so far as my knowledge goes, any agreement other than the agreements that have been testified to in this case as signed agreement with the employers.

"Q. Have you ever at any time entered into an agreement with any intention whatsoever of violating the Interstate Commerce Law?

"A. No, I have not.

"Mr. Clark: Just a minute, we move to strike out the answer as intent is immaterial.

"The Court: Let it go out. The objection is sustained."

Cross-Examination

By Mr. Clark:

I testified about a contract with the Pacific Manufacturing Company. There was no controversy between Ryan and the Pacific at any time with the exception of when the differential in wages went into effect. I think that is the time I testified about. The controversy between Pacific and Ryan had to do with one job in San Mateo County that Pacific Manufacturing Company were figuring under a lesser scale than what was being paid under the Award of Arbitration.

(Testimony of Joseph F. Cambiano.)

I couldn't say just the date offhand it started. I believe I said I got [827] the telegram from Mr. Hutcheson the latter part of September. Exhibit 39 is the one, dated September 7.

I reported shortly after that to Santa Clara. I think there was a letter followed up on that; I was South at the time and when I caught up with my work I came up, shortly after. If the letter read to that effect I was there about September 13. I could not swear to that signature on Exhibit 39-6.

The signature was stipulated, and thereupon letter of September 13, 1938, was introduced as Exhibit 39-6, and was read as follows:

"Mr. W. L. Hutcheson, General President, Carpenters' Building, 222 East Michigan Street, Indianapolis, Indiana.

"Dear Sir and Brother,

"On September 6th I wired you requesting that you assign General Representative J. F. Cambiano to this District on a matter pertaining to a protest from the Pacific Manufacturing Co. Santa Clara, Calif.

"Contractors in the Bay Counties District Council jurisdiction are being told that if they use millwork from the Pacific Manufacturing Co. that Brotherhood members will not install or work same.

(Testimony of Joseph F. Cambiano.)

"The above mentioned firm operates in agreement with this Council and their products bear the Label of our Brotherhood.

"It is the opinion of this Council that any contractor or group of contractors has the right to refuse to accept bids from any mill or cabinet manufacturing concern in the interest of 'Home Industry,' but when our Brotherhood members agree not to work any material bearing the label of our Brotherhood then that is something else.

"The management of the Pacific Manufacturing Co. has protested the action of the Bay Counties District Council, to this [828] Council, in attempting to ban union label millwork.

"Bro. J. F. Cambiano dropped in here on his way to Los Angeles and no doubt he will make his report on the situation to you.

"By this time you probably have a copy of the San Francisco Mill Agreement, please note paragraph 17.

"The General Office and the Santa Clara Valley District Council spent too much money and energy combatting the non-union American Plan set up here for 15 years and at this time our membership does not intend to lose all that it has gained after a long and bitter struggle.

"The situation is a serious one and this Council requests that Representative Cambiano be assigned

(Testimony of Joseph F. Cambiano.)

to the Santa Clara and Bay Counties Districts until such time as the entire mill situation can be straightened out.

"Fraternally yours,

"SANTA CLARA VALLEY
DISTRICT COUNCIL,
M. L. BLANCHFIELD,
Secty.'"

I was assigned.

Section 17 of the 1938 agreement that is referred to reads:

"In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by sawmills, mills, or cabinet shops, or their distributors, that do not conform to the rates of wage and working conditions of this agreement. The purchase, working and sales of the following products is excepted."

Thereupon the Union Defendants stipulated that the signature to Exhibit 39-7 is M. L. Blanchfield and Exhibit 39-7 was introduced in evidence as to the Union defendants, and was read as follows:

"This is likewise a letter on the letterhead of the District [829] Council of Carpenters, San Jose, California, sent to Mr. W. L. Hutcheson,

(Testimony of Joseph F. Cambiano.)

"September 14, 1938.

"Mr. W. L. Hutcheson,
General President,
Carpenters Building,
222 East Michigan Street,

"Dear Sir and Brother:

"Enclosed please find copy of letter from the
Pacific Manufacturing Company, of Santa Clara,
California, which is self explanatory.

"You will note the request made by that Com-
pany.

"Trusting this matter can be adjusted, I remain,

"Faternally yours,

SANTA CLARA VALLEY
DISTRICT COUNCIL
OF CARPENTERS

By M. L. BLANCHFIELD,
Secretary.

"The enclosure, Exhibit 39-8 is: "Pacific Manu-
facturing Company, Santa Clara, Calif., Septem-
ber 13, 1938

"Mr. M. L. Blanchfield,
% Santa Clara Valley District
Council of Carpenters,
San Jose, California.

"Dear Mr. Blanchfield:

"You will find herewith a copy of our letter ad-
dressed to Mr. J. F. Cambiano relative to efforts
made by the Bay District Council of Carpenters

(Testimony of Joseph F. Cambiano.)

to prejudice the general contractors in the bay area against our millwork.

"Since writing this letter to Mr. Cambiano another case has come up with the office of the construction quartermaster at Fort Mason, San Francisco. Major Jones in that office informed our San Francisco sales manager that he had been notified that he might have trouble if they awarded us any millwork. He also told us that it would be necessary for the Pacific Manufacturing Company to give him some evidence that our work was fair and could not be discriminated against. [830]

"We think a letter to that effect to the Construction Quartermaster's office from your general offices would clear up this misunderstanding.

"We trust that your office will make every effort to get this situation cleared up.

"Yours very truly,

PACIFIC MANUFACTURING
COMPANY,

By J. L. PIERCE,

President.'"

I have never seen Exhibit 39-9 before. I don't recall it. Exhibit 2-1 has nothing to do with Fort Mason or anything. I believe it is a copy of the letters and instructions the General President mailed to Secretary Blanchfield of the Santa Clara District Council of Carpenters. That is the first time I have seen that one.

It was stipulated that Exhibit 39-9 was a carbon

(Testimony of Joseph F. Cambiano.)

copy of a letter sent by the General Office, and it was introduced in evidence and read as follows:

“September 20, 1938.

“Mr. M. L. Blanchfield, Secretary,
Santa Clara Valley District Council,
72-78 North Second Street,
San Jose, California.

“Dear Sir and Brother:

“This will acknowledge receipt of your communication of September 13th as well as your communication of September 14th, together with communication you received from the Pacific Manufacturing Company, dated September 13th, and in reply thereto desire to first call your attention to a communication addressed to you under date of July 7th, 1938 by the First Vice President, which I quote:

‘Mr. M. L. Blanchfield, Secy.,
Santa Clara Valley D. C.,
72 N. Second St.,
San Jose, Calif.

‘Dear Sir and Brother:—

‘According to our records the agreement between your [831] District Council and the various mill owners in your district expired June 15, 1938, therefore, I am writing you at this time to request that you forward me by return mail copy of your new agreement effective on and after June 15th, and at the same time would also request that you

(Testimony of Joseph F. Cambiano.)

advise me the names of the various concerns that have signed this agreement.

"Awaiting your reply, I remain,

Yours fraternally,

MAH

(S) M. A. HUTCHESON,

S

First General Vice President."

"Up to this time our records do not show that we received from you any reply to that communication.

"As I understand your agreement that expired on June 15, 1938 read as follows:

" 'Paragraph 21'

" 'This agreement is to remain in effect for a period of not less than one (1) year from June 15th, 1937 or until June 15th, 1938, and shall continue to remain in full force and effect thereafter, except that it shall be subject to change, modification or termination by either party upon sixty (60) days notice being served in writing upon the other party.'

"My understanding is that when the Bay Counties District Council was considering and arranging for negotiations with the Mill Operators of the Bay area on a new agreement there were representatives of your Council, or the Mill Local in your Council, sat in on various occasions with the committee of the millmen.

"I understand, full well, that the Pacific Manufacturing Company being located in Santa Clara

(Testimony of Joseph F. Cambiano.)

is not in what is usually referred to as the metropolitan area in and around the Bay District, but in the past the agreement has been the same as that in the Bay area.

"My further understanding is that the matter of the scale [832] of the millmen in the San Francisco area was referred to an arbiter by consent of the Mill Operators in the San Francisco area and Bay Counties District Council, and that the decision of the arbiter was, giving the millmen an increase of \$1.00 per day, raising their wage scale to \$9.00 per day.

"I am quite sure that you and the members of your Council understand that it is the policy of the Brotherhood that we assist members of our organization in every way we possibly can, and when it comes to determining their wage scale that is a matter of local autonomy.

"The members of the Brotherhood in the Bay area took what they thought was the proper procedure in negotiating for the establishment of their wage scale, and through negotiation got a \$9.00 wage scale established for the mill employees, and, as I understand, the Mill Operators on the San Francisco side of the Bay Counties are paying the \$9.00 scale.

"It is the duty of the undersigned, and other General Officers, to protect the members of our organization in every way we possibly can, and in view of that fact, and due to clause 21 in your

(Testimony of Joseph E. Cambiano.)

agreement, heretofore quoted, it is my desire that you, representing your Council, notify the Mill Operators that in conformity with Section 21 you are desirous of receiving within sixty days a wage scale equal to that of the San Francisco area that has been given to our millmen by the arbiter; namely, \$9.00 per day, or if they will not pay that and the members of your district wish to continue to work at the \$8.00 wage scale it will be necessary, if they desire to continue the use of the label of our Brotherhood, that they agree they will not ship their material into a locality where the wage scale is higher than that paid by the Santa Clara mill operators. In other words if they wish to continue to ship material into the San Francisco district, and use the label of the Brotherhood, [833] it will be necessary that they pay a wage scale equal to that paid in the San Francisco area, and if they do not wish to pay that and want to continue to use the label they will have to agree not to ship material into that locality or any other locality paying a higher wage scale than that now being paid in your district.

"In reference to your communication wherein you ask that Brother Cambiano be assigned to the Santa Clara and Bay Counties district until such time as the entire mill situation can be straightened out, will say that we have no objections to rendering every possible assistance, and we are sending a copy of this communication to repre-

(Testimony of Joseph F. Cambiano.)

sentative Cambiano with instructions that same is to be used for his guidance in rendering what assistance he can.

"I trust that you will not delay in notifying the Pacific Manufacturing Company of the contents of this communication so that the matter can be adjusted at once."

"Fraternally yours,"

W. L. HUTCHESON

"General President."

Paragraph on the second page, in blue pencil, Defendants' Exhibit 2-1, a letter from J. F. Cambiano to W. L. Hutcheson, reading:

"Thursday a meeting was called by the Cabinet Manufacturers here in Los Angeles for the purpose of closing the agreement but I find myself in a rather peculiar position—for all these years I have been selling the labels of our Brotherhood, but according to your ruling, dealing with the Pacific Manufacturing Co., so far as the Weber Company is concerned this will let them out. However, I have not informed him of your decision until after we meet in San Francisco. In the meantime I am stalling with the closing of this Millmen's agreement," refers to the ruling the General President made on the Pacific [834] Manufacturing Company.

As I understand it the ruling that he made only applied to the Six Counties setup and did not

(Testimony of Joseph F. Cambiano.)

apply to Los Angeles, for the simple reason that at the time the Weber Company was signed he did not have a label; we were working under what was called a posted agreement, the label did not come into the Weber Company until January 20, 1941. That is in October.

"Q. What were you in a peculiar situation about, then?

"A. Well, the Weber Company unionized its men but he did not want the label. If this material came in here it would not be installed, because it did not have the label.

"Q. When did you unionize the Weber Company? Didn't you testify in 1940 or 1941?

"A. The Weber Company was not completely organized and the men were not all tied up in the union until the time he made application for the label.

"Q. That was in 1941, was it not? Didn't you testify to that?

"A. So that there won't be any misunderstanding, I have the original letter that I sent to the Secretary of the District Council in Los Angeles, 'Please be advised the first agreement with the Weber Showcase & Fixture Company was effective as of October 11, 1940. The Weber Showcase & Fixture Company was furnished the label stamp No. 37 on January 20, 1941. The second agreement was signed with the Weber Showcase & Fixture Company on August 1, 1941.'

(Testimony of Joseph F. Cambiano.)

"Q. This letter here, Mr. Cambiano, is dated October 1, what was the rather peculiar position you were in at that time because of the ruling of the General President as to the Pacific Manufacturing Company, so far as the Weber Company was concerned?

"A. We would not be putting up the material unless it had the label.

"Q. What had that to do with the ruling on the Pacific?

"A. The Pacific had to do with the six county rate in this area. [835]

"Q. I say, what had the Pacific ruling to do with the Weber Company? You say this ruling only applied to the six counties. Weber is in Los Angeles, is he not? A. Yes.

"Q. What has the Pacific ruling got to do with Weber that put you in this bad position that you say you are in?

"A. I do not recall it.

"Q. Isn't it fact, Mr. Cambiano, that the ruling of the General President was that the Pacific Manufacturing Company could not ship out of Santa Clara County unless they raise the wage scale? Isn't that true?

"Mr. Rutzohn: I object to that, the letter states otherwise that has been introduced in evidence.

"Mr. Clark: That letter there does not.

"Mr. Rutzohn: It shows just the contrary.

(Testimony of Joseph F. Cambiano.)

You are trying to put a construction on this language——

“The Court: It is cross-examination.

“A. As far as the Pacific Manufacturing Company is concerned, Mr. Hutcheson told Mr. Pierce just what was in the letter.

“Mr. Clark: Q. That is in the letter that I read to you a moment ago, Exhibit 39-9, you just read. Will you read that part, please, to the jury?

“A. ‘In other words, if they wish to continue to ship material into the San Francisco District and use the label of the Brotherhood it will be necessary that they pay a wage scale equal to that paid in the San Francisco area, and if they do not wish to pay that and want to continue to use the label they will have to agree not to ship material into the locality or any other locality paying a higher wage scale than that now being paid in that district.’ I don’t recall what that had to do with Weber Manufacturing Company. The scale in Los Angeles at that time was lower. The question was never raised under this ruling whether he would not be able to ship here even if he was organized. [836]

I organized the Weber Company. The 1938 contract took effect on November 1, 1938.

Exhibit No. 42-21 is a report from me to Mr. William Hutcheson and was introduced in evidence, and read as follows:

“This is on the stationery of the United Brother-

(Testimony of Joseph F. Cambiano.)

hood of Carpenters and Joiners of America, 17 Aragon Boulevard, San Mateo, California, November 12, 1938. It reads as follows:

Dear Sir and Brother:

Upon arriving in San Francisco Monday Nov. 7th I contacted the Management of the following concerns in the six counties: Mr. Ennes, Secy. of the Cabinet Mfrs. of San Francisco, Mr. Pearson of the Redwood Mfg. Co. of Pittsburg, Mr. McKeon of San Mateo County, Mr. Pierce of the Pacific Mfg. Co., Santa Clara, Mr. Edwards of the Oakland Planing Mill Owners, Mr. Minton of the Minton Lumber Co., Mountain View. All of these were contacted in person for the purpose of having them present in a conference in clearing up our recent negotiation dealing with wages, hours and working conditions. Am pleased to report that Wednesday evening when the meeting was called they were all present. While there were some misunderstandings to be cleared up, after a lengthy session the meeting adjourned with but one problem uncompleted; that [837] had to do with the Oakland Agreement. Same was taken care of the following day.

"I also held a meeting with members of our organization comprising the six counties in regard to future policy in dealing with the mill situation. I also attended the meeting of the Millmen's Union in San Jose. Considerable time was spent in Oak-

(Testimony of Joseph F. Cambiano.)

land as there has been a disagreement between the two secretaries on both sides of the Bay. However, this has now been cleared up and I am satisfied, so far as the mill situation is concerned, it is in very good shape. Copy of the agreements covering these counties will be mailed to you by Secy. Ryan of the District Council of the Bay Districts, and Secy. Blanchfield of the Santa Clara Valley District Council; and I will mail you a copy of the Redwood Mfg. Co.'s agreement covering Contra Costa County. This completes my assignment so far as the mills are concerned.

"There still remains the question of three manufacturing companies, makers of ironing boards and medicine cabinets, which are meeting stiff competition from the South and are deserving of some consideration. Board Member Muir has taken this matter up when he was in Oakland and I prefer not to do anything with this until after hearing what arrangements he had agreed upon with Mr. Edwards, Secy. of the Association. It may be necessary within the next few weeks to call another conference in this regard.' "

I don't recall offhand what the disagreement was between the two secretaries on both sides of the Bay, there is so much disagreement over there between Nat Edwards and Ryan. We never could agree on anything with Mr. Edwards over there; He would say something today and tomorrow he would change it. Mr. Ryan is the secretary. The dis-

(Testimony of Joseph F. Cambiano.)

agreement was everything in general. You never could get Nat Edwards to agree on anything [838] and stay put; they were fighting all the time. I think that is the disagreement referred to in the letter just read.

The language in Exhibit 2-K, "The San Francisco Planing Mill Owners and Cabinet Fixtures are taking the position that this paragraph must be lived up to or wages brought down to meet those of a lower bracket", refers to paragraph 2 of the agreement.

I didn't have anything more to do with the 1938 contract after November 26. I was all through when the contract was—except finishing up the work; the mills that had old work on hand, the Redwood Manufacturing Company, they put theirs into effect immediately; the P. M. Company, I think, took a little less than forty days. I had absolutely nothing to do with the San Francisco contract after that date, because they set up their own program to dispose of the old work. I had dealings on the 1939 contract only to the extent of calling in the two firms outside of the Bay Counties District, Pacific Manufacturing Company and Redwood Manufacturing Company.

Thereupon letter was marked "U. S. Exhibit No. 184", and the following read in evidence:

"Mr. William L. Hutcheson, General President, Carpenters Building, Indianapolis, Ind. Dear Sir and Brother:

(Testimony of Joseph F. Cambiano.)

"My report for the week ending June 3rd, as per Secretary Ryan's request I went to San Francisco to attend a meeting of the Mill Owners Saturday afternoon. Upon arriving, we discovered the Mill owners, at least a large proportion of them, had left town to take advantage of the Saturday to Tuesday holiday. There was no meeting. Same has been set for this coming Monday. I believe we will be able to arrive at an agreement. We may have some difficulty with Mr. Edwards of Oakland, as he wants to add a number of doors to the exempted list."

In the 1939 one, whenever there was a meeting to [839] negotiate an agreement, which every local union could make a request for, it would be up to me to notify Redwood Manufacturing Company, of whatever date it would be set for with the Bay Counties. In other words, Mr. Ryan sent out a call for his local unions, 42 and 550, and because the Bay Counties could not call in Pittsburg or Santa Clara on account of it was out of his district. All I had to do was notify the two outside firms there was going to be a meeting here at a set date and I sat in the meetings. In fact, I was made chairman of the meetings, just because I was there, but I had no voice in the matter because the entire negotiations would be between the employers and employees.

Mr. Pierce and Mr. Pearson took the position whenever there was a meeting the International

(Testimony of Joseph F. Cambiano.)

would call to their attention they would be willing to come and attend. They did not feel they would be required to come if notice was sent to them by Mr. Ryan.


Mr. Hutcheson told me to go to the meetings I attended. I went there to assist our local unions in any way possible. I attended, pursuant to that order, practically all of the meetings; I missed several of them.

Cross-Examination

By Mr. Faulkner:

I did not participate in the negotiation of either the 1936 or the 1938 contract. My first connection with this matter in controversy was after the 1938 contract had been entered into between the San Francisco group and the two Millmen's Unions.

The situation presented by the difference in wage scales of \$9.00 in San Francisco and \$8.00 in Oakland was the result of the Arbitration Award. The matter was settled by an [840] arrangement being made whereby the employers of the millmen in the six counties in this area were to agree upon a uniform wage. That compromise was worked out between the Cabinet Manufacturers and the Local Union Organization. I participated in that. My position and aims related primarily to the employees. It happened I had been familiar with the Pacific Manufacturing Company situation for sometime. I also knew of the situation with respect



(Testimony of Joseph F. Cambiano.)

to Redwood Manufacturing Company. I remember in the contract worked out in settlement of this differential in wage scale, there was a provision contained known as paragraph 2 that General Hutcheson, or someone, said would have to go out of the agreement.

I am familiar with the paragraph that appears under the head of "Maintenance of fair labor conditions". If I am not mistaken it was Mr. Hart who suggested it remain in. At the time Mr. Hutcheson objected or directed that it go out. I wouldn't say for sure if Mr. Ennes also suggested it remain in, but I know it came from the employers' side, some San Francisco employer. I wouldn't say for sure Mr. Ennes was not the one who made the suggestion it remain in, but I know the Planing Mill group was very much concerned about it.

The basis of the compromise was a uniform wage scale for employers of Millmen's Unions 550 and 42 and similar unions in the six counties, with the exception of one part of the operations in the Redwood Manufacturing Company, where the employer had to agree it was somewhat of a different operation, there was a slight differential there. Redwood Manufacturing Company was not present at that meeting and its subsequent contract was not discussed at that meeting.

Meetings when the men from the international office were here and said the paragraph should go out was around the first part of October, 1938. [841]

(Testimony of Joseph F. Cambiano.)

Exhibit 2-Q was a report I made to Mr. Hutcheson concerning the so-called compromise dated October 24, 1938.

Thereupon the letter was introduced as "Defendants' Exhibit 2-Q," and was read as follows:

"Dear Sir and Brother:

"Reporting on the mill situation covering the six counties in the Bay District, as I have previously reported, Local Union #550 of Oakland by vote of 246 to 10 voted to accept a six-county program of \$8.50 per day. Local Union #42 of San Francisco had a special called meeting last Monday and after a stormy session accepted my report and recommendation by voting 212 to 40 in accepting the program; this making a total of 258 for and 50 against. The men were ordered to return to work to the number of 300.

"I have been dealing with the Pacific Manufacturing Co. of Santa Clara and have presented an agreement which will be presented to Millmen's Union #262 at San Jose at a special called meeting this Monday night. This agreement embodies practically all of the Bay Counties' working conditions. San Jose Millmen's will accept this agreement I am sure. I have been arranging with the committee thru the District Council in working out the incomplected work.

"I have also spent considerable time with a committee of Millmen's Union #1956 of Pittsburg and the Management of the Redwood Mfg. Co. We have

(Testimony of Joseph F. Cambiano.)

come to an agreement and same will be submitted to the Millmen's Union for their approval this coming Thursday evening. This will pretty well clean up this situation with the exception that I am to call a conference of representatives from the six counties to determine the length of the agreement. It is the opinion among most of the employers and some of our local unions that it should run for a period of two years. [842]

"Last week I held a conference with the General Manager of the I. Magnin & Co., one of the largest department stores in San Francisco. This firm is building a \$2,000,000 building in Los Angeles. The millwork on this job amounts to \$300,000. A firm from San Francisco was to do the work, but due to the pressure brought upon I. Magnin & Co. thru its customers in Los Angeles, it became necessary for them to award at least 80% of this work to the Los Angeles mills. The Management, knowing that the Weber Fixture Co. has been unfair to us, has endeavored to work out some plan in order to avoid *embarassment* for themselves in Southern California. I have taken this matter up with our District Council in Los Angeles with instructions how to proceed.

"In addition to attending these meetings I have attended the meetings of Local #42 of San Francisco, #550 of Oakland, #62 San Mateo, and the District Council.

"I will be spending most of my time in San Jose

(Testimony of Joseph F. Cambiano.)

and Pittsburg this coming week, and am also checking all of the mills in the six counties. I do not anticipate any trouble whatsoever.

"Enclosed please find receipt for last week and bill for this week.

Fraternally yours,

J. F. CAMBIANO."

After we reframed our contract in 1938, pursuant to the discussion of some international officer, that paragraph concerning "Maintenance of fair labor conditions" was out. After the paragraph concerning working conditions had been left out, a contract was entered into with Redwood Manufacturing Company which is in evidence and marked 123-8.

There is a differential in the wage scale in that contract. I don't think there was a sliding scale in Pacific [843] Manufacturing Company, excepting on stock sash and doors, which was identical to the one here in San Francisco. There were not differentials in the wage scale there. The controversy we had with the P. M. Company was over the special sash and doors against the stock sash and doors; they were using the same operation and the same scale, which was the lower scale, to be applied on a higher rate.

After the 1938 agreement we entered into another contract with the P. M. Company at about the same time as the one in the Bay District. The

(Testimony of Joseph F. Cambiano.)
negotiations were practically at the same time. I think the Redwood was a little later.

I testified that the intent of the paragraph in the 1938 contract concerning the memorandum on the maintenance of the fair labor conditions was to provide for the protection of the local people bound by the contract then in existence against a lower scale in the six counties. Notwithstanding that Mr. Hutcheson ordered it out, Mr. Ennes or Mr. Hart, one of the two, ordered it to remain in. The reduction of the half a dollar a day was on account of bringing in the six counties.

Cross-Examination

By Mr. Tuttle:

With reference to Mr. Hutcheson's letter dated September 20, 1938, to Mr. Blanchfield, secretary of Santa Clara Valley District Council, where Pacific Manufacturing Company is located, according to the policy of the Brotherhood the matter of a wage scale is a matter of local autonomy. That is the reason you notice in the minutes it all went to a vote of the Local Union. Every Local Union votes the acceptance or rejection of all the agreements. By local autonomy is meant "a matter of the jurisdiction and sovereignty of the particular local." That has in charge the wage scale. [844]

We have always considered Santa Clara County is what is commonly known as the Bay Area. Because of that geographical fact Santa Clara subsequently came into the six-county agreement at the

(Testimony of Joseph F. Canibiano.)

end of 1938, and took part in the 1939 contract. Prior to the 1921 crash here Pacific Manufacturing Company and the Bay District always worked under union conditions.

In 1921 was the American Plan fight. The reference in the letter "in the past the agreement has been the same as that in the Bay Area", refers to the time mentioned. At the time the letter was written, September 20, 1938, was the time when Mr. Edwards, representing the employers in Oakland, had refused to go along with the Arbitration Award of \$9.00. He got away with four-bits worth.

On September 20, 1938, we had this situation: In Oakland County Mr. Edwards refused to pay more than \$8.00. San Francisco County had \$9.00 and Santa Clara County had an agreement which could be terminated on sixty days' notice, under which only \$8.00 would be paid. That conflict of rates within the Bay Area confronted the situation with the trouble I was dealing with in that letter. The ultimate result by which that trouble was dispersed was: the Bay Area was brought together as an economic unit on a common wage scale, the union men in San Francisco giving up fifty cents and the local men in Oakland getting fifty cents.

We notified Pacific Manufacturing Company to terminate the agreement in sixty days pursuant to Mr. Hutcheson's suggestion in that letter. At the end of sixty days Pacific Manufacturing Company came up, according to the rules of the Union, for a new agreement.

(Testimony of Joseph F. Cambiano.)

I was tipped off when I got here that the Union and the employers had gotten together and they offered me the [845] \$8.50. The situation in regarding the bringing about uniformity was that Santa Clara would come in on the \$8.50 rate, and it was agreed to.

"Q. And the suggestion of Mr. Hutcheson here in this letter was passed on to the Pacific Manufacturing Company that under that section, the sixty-day clause, when that terminated, they wanted a new agreement and the use of the label in connection with the new agreement and they should pay the same rate of wage as the other counties in this economic unit?

"A. That is when it took place."

The result was, for at least a short period of time, harmony on the \$8.50 rate in all these counties.

I recall Mr. Ryan telling me of having mailed the letter out referred to in Exhibit 41-4 "I pointed out to the employers that copies of this letter carrying this information were sent to Home Builders, Contractors, Architects and others, broadly advertising the fact that that kind of millwork could be brought in and would be installed." Wide publicity to the building world was given that direction of General Hutcheson as to the honoring of the label throughout all the counties. I know that the instruction was given referred to in paragraph 2 of that letter as follows: "Furthermore, that the general office, in my presence in a meeting in their

(Testimony of Joseph F. Cambiano.)

office stated that woodwork bearing the label would have to be installed regardless of the scale paid in its manufacture". I issued them out myself time and time again.

The instruction from the General Office was, we were to make as nearly uniform agreement as possible, taking into consideration, perhaps, some differential that is in certain operations, but the intent was to, so far as the issue was concerned, it had to be uniform. Uniformity of the wages came up every time we sat in here. If they brought up the [846] Pacific Manufacturing Company on the outside, they would say, "Well, bring in the Pacific Manufacturing Company," and after that they brought in the Pittsburg Company in Contra Costa County.

I remember the instance bringing about the letter from Mr. W. L. Hutcheson to Mr. Ryan, that millwork manufactured in Tacoma, bearing the union label, must be recognized and installed in San Francisco. Tacoma is in the State of Washington.

Pacific Manufacturing Company did not ever lose its label.

Cross-Examination

By Mr. Faulkner:

"Mr. Faulkner: These agreements that counsel for the Government have here are not of value because they are before this 1938 arrangement. There is one item here that we referred to that we might read into the record, in the interest of clarity, without having to read the whole contract.

(Testimony of Joseph F. Cambiano.)

"Mr. Cambiano testified that the reason that the Pacific Manufacturing Company—this is my recollection of his testimony—did not participate in the negotiations leading up to the 1938 contract in its initial stage, is that they had not been served with notice. Paragraph 21 of the 1937 contract provides:

"This agreement is to remain in effect for a period of not less than one year from June 15, 1937 until June 15, 1938, and shall continue to remain in full force and effect thereafter except that it shall be subject to change and modification or termination by either party on 60 days' notice being served in writing on the other party."

"Q. That is the paragraph, Mr. Cambiano, that you referred to? [847]

"A. Yes.

"Q. I think I misunderstood an answer of Mr. Cambiano with respect to the Pacific Manufacturing contract. Did I understand, is this correct, that the Pacific Manufacturing contract here actually entered into in 1938 was similar as to wages of the journeymen millmen but there was a difference in the sash and door men?

"A. That was the dispute between the sash and door men."

That controversy was over the detail of stock, sash and doors. It appeared after the agreement was entered into that they were using the same rates

(Testimony of Joseph F. Cambiano.)

for stock sash and doors and special or detail sash and doors. That was the disturbance we had in there.

The apprentices are paid at a higher rate than they do here in San Francisco, always bid, and our boys insisted it was agreed amongst the employers they would not disturb the apprentice setup.

During the time of these disputes between the unions in 1938, and Pacific Manufacturing Company, that company did about 80 percent. of the work in this district.

Cross-Examination

(Resumed)

By Mr. Tuttle:

Refreshing my memory, I know now there was also in paragraph 17 this clause, "Nothing herein is to be interpreted as to any way interfere with any business of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-trust laws." I knew it at the time I received that contract.

Further Cross-Examination

By Mr. Clark: [848]

I would not say for sure whether that same paragraph 17 is in every contract in this district with the exception of Pacific Manufacturing Company. I know that the exemption is out of Pacific Manufacturing Company. Pacific came up to \$8.50.

(Testimony of Joseph F. Cambiano.)

Further Cross-Examination

By Mr. Tuttle:

Paragraph 17 in 1939 is out; it is in in 1938.

Redirect Examination

By Mr. Routzohn:

Pacific Manufacturing Company came up to \$8.50 and the San Francisco mills came down from \$9.00 to \$8.50. The Local Unions came down to \$8.50 for the benefit of the millmen in the six counties. The Locals agreed to take \$8.50 rather than \$9.00 awarded to them in 1938, and are still receiving it. At the time they took the cut they were receiving \$9.00, not only in San Francisco, but in San Mateo as well.

"Q. There is a dispute on now, is there not, in 1941, over the wage scale?

"Mr. Clark: We object to that as immaterial, and as calling for the conclusion of the witness.

"The Court: The objection is sustained.

"Mr. Routzohn: Q. Is there an arbitration going on at the present time over the wage scale between the employers and the employees?

"Mr. Clark: We object to that as being immaterial to any issue in the case.

"The Court: Sustained."

"Mr. Routzohn: That is all." [849]

Thereupon, the following was read in evidence:

" * * * from the General Constitution of the

United Brotherhood. It is part of what is called the obligation which each member takes when he is initiated into the organization of the United Brotherhood as a member in good standing. I won't read the whole of the obligation, but I would like to read this portion of it:

"I,, of my own free will and accord in the presence of these members here assembled do solemnly and sincerely promise on my sacred honor that I will never reveal by word or deed any of the business of this United Brotherhood unless legally authorized to do so. I promise to abide by the Constitution and Laws and the will of the majority, observe the local trade rules of this order, and that I will use every honorable means to procure employment for brother members. I agree that I will ask for the Union Label and purchase union-made goods and employ only union labor when same can be had."

"Then I will skip some portions that are not relevant here, and proceed as follows:

"And I further affirm and declare that I am not now affiliated with and never will join or give aid, comfort or support to any revolutionary organization or to any organization that tries to disrupt or cause dissension in any local union, district council, State or Provincial Council of the International body of the United Brotherhood of Carpenters and Joiners of America.'"

Thereupon, defendants rested.

Thereupon, the following evidence was introduced in behalf of plaintiff, over the objection of defendants that it was not proper rebuttal:

“Mr. Howland: In Exhibit No. 111, the minutes of the Bay Counties District Council of Carpenters for April 13, 1938, [850] the following appears under the heading Communications:

“‘From Local Union 42 asking that a provision be incorporated in our agreement with the employers stipulating that nothing but union-made mill and cabinet work would be handled. Referred to Unfinished Business.’

“Mr. Routzohn: Will you stipulate that was referring to the same proposal?

“Mr. Howland: As I construe that minute, Mr. Routzohn, that records the receipt of a letter by the District Council from Local 42, asking that a provision be incorporated, and so on.

“Mr. Routzohn: All right.

“Mr. Howland: From the minutes of the same Council for July 20, 1938, a short excerpt.

“Mr. Routzohn: The same objection, if Your Honor please, because it merely shows an agreement on the part of 42 and 550 to endorse an agreement, and that agreement is in evidence.

“The Court: Overruled. You may read it.

“Mr. Howland: In Exhibit 111, minutes of the Bay Counties District Council of Carpenters, July 20, 1938, under the heading New Business, the following appears:

“‘The new agreement between the cabinet man-

ufacturers and planing mill owners and Local Unions 42 and 550 and the District Council was read and explained, and it was moved and carried that the Council endorse the agreement.' "

* * * * *

"Mr. Howland: The minutes of the District Council for March 1, 1939, contains the document entitled 'Proposed Changes to the By-Laws of the Bay Counties District Council of Carpenters' approved as a Whole by the District Council, Wednesday Evening, December 21, 1938,' and in the paragraph entitled 'Millmen,' change No. 22, the following appears:

"Page 35, section 1. Substitute District Council for Building Trades Council in the first and second lines and add [851] 'In conformity with the agreement between the mill owners and millmen, the District Council will refuse, etc.'

"It shall read: 'Section 1. It is agreed by the District Council that, in conformity with the agreement between the mill owners and millmen, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or paying less than the wage scale hereinbefore quoted, or employing other than union mechanics.' "

* * * * *

"Mr. Howland: These are the minutes (Exhibit

124-37) of the joint conference committee dated January 21, 1939, in which the following appears:

"Meeting with mill owners on last Wednesday, January 11, 1939. They refused to sign for any changes in present agreement, and it was then moved by Mr. Ennes and seconded by Mr. Hart that labor immediately initiate proceedings for a change and modification of the present agreement, and motion carried."

"And with reference to the motion by Mr. Ennes, the following pencil notation appears."

* * *
"Mr. Howland: This pencil notation reads:

"It was then moved by Mr. Ennes—reads as follows:

"Move by Ennes that such acts as are necessary to be taken on part of labor as will start the negotiations in six counties."

"And down below it says:

"Bills to come. Minutes approved as corrected."

"That is the pencil matter that I have just read. There is a pencil line leading around the top of the page to the word 'Mr. Ennes.'"

* * *
"Mr. Howland: From the joint conference committee minutes of December 3, 1938, the following appears:

"Brother Ryan told of calling a meeting of the joint [852] conference committee. San Mateo was

represented by Mr. McKeon, San Francisco by Mr. Ennes, Gaetjen and Warden, Mr. D. N. Edwards of Alameda County. If the scope was six counties they would be bound to arbitrate, and if not six counties, the arbitration clause would not be binding.

“Ennes insists paragraph No. 2 go in.

“Ryan reported Brother Cambiano phoned some orders from General President Hutcheson to the effect that the San Francisco agreement must not contain quotations from the arbitration board and paragraph No. 2 must be eliminated.”

“Brother Cambiano hinted the General President did not favor arbitration.

“Brother Ryan stated he would write General President Hutcheson for information before drawing up agreement for the Bay Counties District Council.

“Moved by Brother Sholden, seconded by Brother Westby that we request Brother Ryan to draw up a form of agreement that conforms to the San Francisco agreement including a clause stipulating arbitration and submit same to General Office for approval and if approved submit it to the employers in this district. Carried.”

“Mr. Burdell: These are from the minutes (Exhibit 18) of May 31, 1938:

“A lengthy discussion was had on the reply from the G. O. to our letter of May 21, 1938, regarding the Carpenters not demanding the stamp

on the jobs. The letter stated in part, 'inasmuch as Local 42 was affiliated with the D. C. of C., our local should request the Council to adopt a By-Law or Trade Rule that no work would be installed without the stamp.' It was suggested that we do just that. It was also stated 'that 550 and 42 were to get Union stamp clause inserted in new agreement.' "

JOHN G. ENNES,

being previously sworn, testified in behalf of [853] defendants on Surrebuttal, as follows:

In all of the agreements, beginning in 1938, we had paragraph 2, which tied together with a uniform basis four counties. That eventually became expanded into a six-county arrangement, and I did persist in trying to have paragraph 2 in there. It was a binder to bring all of the area, the six counties or four counties, or whatever it happened to be, into a uniform rate. I had reason to believe, well founded, that although it was purported to be on a uniform basis, it was not on a uniform basis. I was insistent, not particularly paragraph 2, but something be put in in some form. I used paragraph 2, because it had, in my opinion, been adjudicated. It was passed on by a competent authority, and I thought that was the thing to do. I did not succeed, however. I still wanted paragraph 2 in there after the wage rate had apparently been agreed upon in the six counties, because there was one particular

(Testimony of John G. Ennes.)

instance in which, when they were going to set that \$8.50 agreement, a contract had been held up or purportedly so, and it was said it was on the \$8.50 basis, but after we got further into it we found out there was something else in it, that is, not uniform. It was substantially so but not uniform, and I was trying to protect myself in those clutches.

Cross-Examination

By Mr. Howland:

Paragraph 2 went out when they went on that \$8.50 setup. Paragraph 2 went out about October 18, 1938. I think that is practically correct. The only way I can fix it was, at the time we introduced the \$8.50 a statement was made that they had approved the contract. It was my impression clause 2 was then definitely out.

About December 3, 1938, I was still of the opinion, and contended, paragraph 2 should be in to bring about a uniformity [854] in our relations. At this moment we are arguing the question, right now, in arbitration, because there are some difficulties which were supposed not to be there but they exist in fact.

Thereupon, it was stipulated the agreements are the best evidence of when paragraph 2 went out.

Thereupon, it was stated that nothing further was to be offered by way of evidence and after the jury

retired from the court room, the following additional proceedings were had:

"The Court: Gentlemen, when the Government rested in the opening of its case motions were made to dismiss as to certain defendants, and thereafter I granted some of the motions. Since then I have heard and considered the evidence as to other of the defendants in the case, and I am now about to make some further dismissals.

"I therefore dismiss the case as to the following defendants upon the ground of the insufficiency of the evidence:

"The San Francisco Building and Construction Trades Council;

"The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 1956;

"M. D. Cicinato;

"Oscar H. Ostlund;

"Leo Roselyn;

"Otto W. Sammet;

"Charles F. Stauffacher."

* * * * *

"At this time, at the conclusion of the taking of evidence in this case, defendants Mullen Manufacturing Company, Fink & Schindler Co., L. & E. Emanuel, Inc., Braas & Kuhn Company, Commercial Fixture and Store Front Institute, John Mullen—I will leave out the names of those you dismissed—Joseph L. Emanuel, J. G. Ennes, each for

himself, and not one for the other, moves to strike out the testimony and all exhibits covered and included in the motion to strike out made by each of these [855] defendants at the close of the Government's case.

"Said motion to strike out made at the close of the Government's case and now appearing in the record here on pages 954 to 961, inclusive, is made to the Court as though repeated word for word at length. The motion is made in this form upon the Court's indication that this is a satisfactory method of representing the motion to strike out.

"That is a full statement on that, your Honor. I know I have clearly identified the references.

"The Court: Yes.

"Mr. Faulkner: Motion for Directed Verdict. The foregoing defendants, each for himself, and not one for the other, at this time moves the Court for a directed verdict and to dismiss the indictment in the full and complete manner as the motion made at the conclusion of the case in chief of the Government, and as though said motions were repeated here at length. Said motion so referred to appears in the record now at page 961, line 15, to page 965, line 16, inclusive. The motion is made in this form without repetition in the light of the court's statement that it is a satisfactory form of presenting our motion.

"Now, I have listed the names particularly—your Honor has just made an order dismissing certain

defendants, and I think the Court understands that I am making that motion, both of the motions for every defendant that we represent that now remains in the case.

"The Court: Yes.

"Mr. Bacigalupi: May I have added to Mr. Faulkner's motions the names of my clients?

"The Court: Yes. Let it be understood that all motions for a directed verdict made by each defendant, each and every defendant be denied and an exception noted.

"Mr. Todd: If your Honor please, would your Honor [856] pardon me, but in view of the similar situation of the two labor councils might I inquire whether your Honor had in mind the Alameda County Building and Construction Trades Council? The evidence was similar to it, and the San Francisco Building Trades Council. I take the liberty of inquiring whether your Honor overlooked that.

"The Court: I will look at my notes further, Mr. Todd, and if I have overlooked something there I will call it to your attention.

"Mr. Howard: Do I understand, your Honor, the motion for a directed verdict of acquittal is being made?

"The Court: Yes, being made, and is denied. I understand those motions are part of the instructions that you have offered, the proposed instructions, of each of the defendants, the instructions which have been offered contain motions for directed verdicts.

“Mr. Howard: Well, we had not proffered those——

“The Court: You don’t save to. Let it be understood that each defendant makes a motion for a directed verdict, that the motion in each instance is denied, and an exception is noted on behalf of each defendant in the case. Is that sufficient?”

Thereupon, opening argument for plaintiff was made by Mr. Clark, during which the following proceedings occurred:

* * * * *

“In the beginning of the case, when the indictment was returned there were eight labor unions in the case, and there were three employer associations and thirty-three millwork and patterned lumber concerns; there were thirty-nine individuals. Since that time some of them have dropped by the wayside by dismissal some of them have pled what we call *nolo contendere*, and some have been dismissed. Now, in the beginning, there were these three associations on the Employers’ side: The Lumber Products Associations, over here in San Francisco. You will remember some of the testimony brought in, a gentleman by the name of Gaetjen, [857] the Secretary of that. Then there was the Wood Products Association, over in Oakland, and that was Mr. Nat Edwards. You will remember that his name was featured in some of the testimony. A third employers’ association was that of which Mr. Ennes is the Secretary, and that is the Cabinet Institute.

"Now, the first two associations I have named have pled nolo contendere, and they are not to be considered by you in deciding their guilt. As his Honor has told you, a plea of nolo contendere in this case is tantamount to a plea of guilt.

"Mr. Routzohn: Your Honor please, we object to the statement just made by the counsel relative to nolo contendere being a plea of guilt, and even the reference to the fact that certain defendants have entered pleas of nolo contendere.

"The Court: Your objection is overruled.

"Mr. Routzohn: All right.

"The Court: The Supreme Court of the United States has said that a plea of nolo contendere is tantamount to a plea of guilt. Now, the word 'tantamount' is my own word, but that is what the Supreme Court has said. So there is nothing in your objection, Judge.

"Mr. Routzohn: Well, may we have the instruction at this time, your Honor please, that that is not to be considered in any way affecting—

"The Court: No, no, you may not.

"Mr. Routzohn: (Continuing) —the guilt or innocence of these defendants?

"The Court: You may not, and I shall instruct the jury to the same effect when it comes to final instructions.

"Mr. Routzohn: May we have an exception?"

Thereupon, the case was argued by Messrs. Tuttle, Todd, McKeivitt, Routzohn, Bacigalupi and Faulkner, in behalf of defendants. [858]

Thereupon, in the absence of the jury, the following proceedings were had with reference to the instructions:

"Mr. Faulkner: Judge, this question arose among the lawyers. As you know, some of them come from Ohio, some come from New York. They wondered, on the matter of excepting to instructions, whether it was you Honor's desire that all exceptions be made in the presence of the jury, or whether the exceptions to the charge can be made immediately upon their retirement.

"The Court: A number of instructions have been offered. I do not know how many; quite a large number. It occurred to me that objections might be made by the attorneys by referring to the instructions by number. That is to say, if you made an offer of eighty instructions, and if you think I have not covered all the instructions that you had offered, I would think that you would have a right to say, 'We take exception to your Honor's refusal to give the eighty instructions that were offered.'

"Mr. Faulkner: What I had in mind was this, your Honor: Your Honor will recall a meeting of the District and Circuit Judges. Your Honor did not happen to be here at the time that I made some remarks to them. I discussed the matter with reference to the new rules about the fact that under our practice, in this particular District, which is dissimilar to some of these other districts, that we have to stand up before a jury and take the exceptions. Judge Welsh said, 'Well, I never made you do that.'

"I said, 'You never made me do it, but we have done that as the practice.'

"Judge Louderback said, 'I follow the practice.'

"Judge Fee and some of these other judges said, 'No, in our District we don't do that. We charge the jury, and immediately thereafter you take your exceptions.'

"And we had quite a discussion at that time, and that evidently is a practice followed in some of the other districts. [859]

"Now, then, whatever your Honor's preference is—

"The Court: Well, I am quite willing to adopt the procedure that you suggest, to have the exceptions made when the jury retires.

"Mr. Tuttle: Thank you very much.

"The Court: I am willing that you should take them in the most informal fashion, and I will, as far as I can, stipulate with you that you have done all that the law requires you to do.

"Mr. Faulkner: I knew that would be your Honor's position, because you have indicated in an earlier stage that feeling. The bar here generally feel that is an archaic rule. Is that agreeable with you, Mr. Clark?

"Mr. Clark: Yes.

"The Court: That will be the understanding gentlemen. The only reason, however, for the other procedure is that sometimes a judge overlooks an instruction, and when you say, 'Well, now, your

Honor failed to give Instruction 74—I have the instruction here, 74, I turn to 74, and I say, 'Well, that is true. I will give it.'

"Mr. Howard: Couldn't your Honor recess the jury?

"The Court: Bring them back again?

"Mr. Howard: I think that occurs so rarely. I remember one case, and that was a stock instruction of Judge Louderback. I called it to his attention, and he said it was clearly an oversight.

"The Court: I have frequently had attorneys call my attention to the fact that I had not given an instruction, and in a case like this, where so many offers have been made—now, I may feel that I have covered an instruction that you have asked me to give, and you feel that I have not, and if you call my attention to it, I say, 'Well, I see no objection to giving it; I will give it to the jury.'

"Now, unless you expect and intend to specifically call [860] attention to every instruction that you wish to object to, or take exception to; I can see no reason why you should not adopt the suggestion I made and except to the Court's failure to give the instructions that you offered.

"Mr. Tuttle: That is entirely agreeable to us, your Honor.

"The Court: I will see to it that all the instructions are filed with the Clerk, so that you will have a complete record, and that ought to be sufficient.

"Mr. Faulkner: That is agreeable.

"The Court: It will take but a short time.

"Mr. Tuttle: That is agreeable to all the defendants.

"Mr. Faulkner: In the matter of any instruction your Honor gives, I assume, as I told the lawyers today, the usual method of excepting to an instruction given but not proposed would be merely to identify it clearly enough so that your Honor knows it.

"The Court: Yes.

"Mr. Faulkner: If your Honor has already gotten the instructions—I know Judge Kerrigan sometimes used to give his charge to us in writing so there would be no problem.

"The Court: If you prefer to do it, I am perfectly willing to listen to your exceptions after the jury has retired. The only thing is, as I say, unless it was something that I considered extremely important, I certainly would not wish to call them back again.

"Mr. Tuttle: Your Honor, your suggestion, as you phrased it a little while ago, is entirely agreeable to us. Your Honor has had these requests before you, and we will, I am sure, not have occasion to call your attention to some particular one as if it had been overlooked. We are entirely content to take the exceptions as you propose, but we would like to do it, as there [861] are so many of us—I mean there are so many groups here—

"The Court: Yes.

"Mr. Tuttle: It might give a false impression to the jury if were all taking exceptions over an extended period. I know the jury would get im-

patient and wouldn't understand it. They would not know it was a legal matter merely.

"The Court: We will follow the procedure of listening to the legal exceptions after the jury has retired.

"Mr. Tuttle: There is one thing that counsel for the defense were a bit concerned about. Perhaps in the absence of the jury, as we are now, we might discuss it with you so as to get your viewpoint. The case is a little unusual in the fact that some defendants, other groups, have entered a nolo contendere. That fact has, of course, been mentioned. It was mentioned in the empaneling of the jury.

"The Court: Yes, I remember.

"Mr. Tuttle: It was mentioned in Mr. Clark's opening, in stating why certain defendants named in the indictment were not here. And it was mentioned in his closing. And it was mentioned in connection with an interruption of his closing. Our concern, therefore, now that that is in the case, is that the jury will thoroughly understand, either through some explicit instruction of your Honor or in any way your Honor thinks appropriate, that that fact is not to be deemed evidence or weighed against any of the defendants on trial.

"The Court: Yes.

"Mr. Tuttle: We should not be hung because some of the defendants, for some reason or other, think that, either to save money or something else, something perhaps in his history that he does not

want to have discussed when he takes the witness stand, decides to plead guilty to a misdemeanor. We have no responsibility for the advice that the lawyer gave him, if he gave him any [862] advice, or for the motive that actuated such a man. And it now being before this jury, that is the thing I am so much concerned about. They will say, 'Well, look at the number of people who pleaded guilty. There must be something rotten in Denmark.' I was just hoping, and I think it is the law—certainly it is fair play—that we should be protected against such an inference as that.

"The Court: I would wish to do that as far as was in my power.

"Mr. Tuttle: Thank you, your Honor, very much.

"Mr. Howard: There isn't any definite proposal on our part in that connection.

"Mr. Tuttle: I have made it verbally.

"The Court: I think I can cover that in my instructions. I will attempt to do so.

"Mr. Tuttle: Thank you, your Honor, very much."

Thereupon, the closing argument in behalf of plaintiff was made by Mr. Clark. [863]

"CHARGE TO THE JURY"

"The Court (orally): Ladies and Gentlemen:

"I wish to add my congratulations to those of

counsel for respective parties for the faithful service you have rendered in the trial of this important case now coming to a close. Please accept my thanks, not only for the attention you have given to the testimony of witnesses and argument of counsel, but also for the uniform patience shown through a long and tedious trial.

"Trial by jury is an institution that has been established through long years of development of Anglo-Saxon jurisprudence. Under it, you are the triers of the facts, receiving and accepting the law, as given to you by me, and applying the facts thereto in considering your verdict. In the proper administration of justice it is absolutely essential that you be inspired by no motive other than the desire to reach the truth in the case. That, and that alone, is your task.

"No question of politics, church or religion; no question of affiliation or lack of affiliation with any group of citizens; no question of spite, fear, favor, prejudice or sympathy must be permitted to enter into your deliberations.

"The indictment charges a misdemeanor, and was returned by the Grand Jury on June 26, 1940. It charges that the defendants entered into a combination to restrain interstate commerce in millwork and patterned lumber, as defined in the indictment. In this connection, you are instructed that this definition includes not only millwork as that word is commonly understood, but also 'lumber which has been paneled, cut, or assembled into

standard or special patterns and forms . . . and such other wood products prepared for use in the construction of dwellings, buildings, fixtures, and store fronts.' The definition in the indictment of millwork and patterned lumber also include wood products 'used in the construction of prefabricated buildings.' [864]

"The indictment stems from a clause in our constitution which gives to the Federal Government the power to regulate commerce between the states, and obviously, interstate commerce is that which passes from one state to another.

"Congress determines the policy of legislation and with this policy neither courts nor juries have anything to do. Congress, acting within its province, enacted, over fifty years ago, a statute known as the Sherman Antitrust Law. The purpose of this statute is to protect the public interest by the maintenance of unrestricted competition in business and to promote unrestrained trade between the states. The benefits to be gained by unrestrained trade between the states were deemed by Congress to be greater than any benefits that would result from arbitrary control of commerce by anyone. In other words, Congress has determined that the public interest is best promoted and protected by the maintenance of competition.

"Section 1 of the Sherman Act provides that every contract, combination, or conspiracy in restraint of trade and commerce among the several states, or with foreign nations, shall be illegal.

"Count I of the indictment charges a violation of this section of the Sherman Act. Count II of the indictment has been dismissed, and you are not to concern yourselves with it.

"In Count I of the indictment the grand jury included among the defendants eight labor unions, as well as some of their officials. I shall refer to these defendants as the labor union defendants. Also included in the indictment were three employer associations and some of their members as well as officials, which I shall call the non-labor defendants. Two of these employer associations, that is, the Lumber Products Association of San Francisco and Wood Products, Inc. of Oakland, as well as those defendants who were members thereof, and their officers, [865] have pleaded nolo contendere. As I have heretofore explained to you, such a plea is an admission of guilt for the purposes of the case.

"In this connection, I think I should say to you that the fact that certain defendants have seen fit to enter a plea which will bring them before the court for judgment should not weigh with you against the defendants who have stood trial. It is not evidence against any of the defendants on trial, nor does it give rise to the slightest presumption against them.

"It is not necessary for you to concern yourselves about these defendants who have pleaded nolo contendere other than in the manner that I may hereafter describe.

"Since the commencement of the trial the case has been dismissed as to several of the defendants. You are to determine the guilt or innocence of the following named non-labor defendants:

"Commercial Fixture and Store Front Institute;

"Mullen Manufacturing Company;

"Braas & Kuhn;

"Fink & Schindler Co.;

"L. & E. Emanuel, Inc.;

"Mangrum, Holbrook & Elkus;

"J. E. Ennes;

"Joseph L. Emanuel;

"John Mullen.

"You will likewise consider in your deliberations the guilt or innocence of the following labor union defendants:

"The Alameda County Building and Construction Trades Council:

"The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America;

"The United Brotherhood of Carpenters and Joiners of America;

"The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42; [866]

"The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550;

"J. F. Cambino;

"Charles Helbing;

"C. H. Irish;

"W. P. Kelly

"Walter O'Leary

"Emil H. Ovenberg;.

"Charles Roe;

"Dave Ryan;

"W. L. Wilcox.

"You will note that the above list of defendants includes a number of corporations. A corporation is an organization which derives its legal existence from a grant of a government, either State, or Federal, or foreign. It is composed of a group of individuals, partnerships, other corporations, or voluntary associations, which may be designated members, stockholders, subscribers, or by other names. For the purposes of legal liability and responsibility a corporation has an existence separate and apart from that of the person who are its components; it may sue in the courts, or be sued; and it may be guilty of violations of the Sherman Antitrust Act apart and separately from the guilt or innocence of its members, stockholders, or other components, and from that of its officers, directors, agents, and employees.

"You are to determine the guilt or innocence of a corporation by an examination of the acts done by its responsible officers or agents. The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation.

"If you find that there did exist a combination and [867] conspiracy such as is charged in the indictment, and that any defendant corporation participated therein, then I instruct you that such act of participation is deemed to be also the act of the individual director, ~~officer~~ or agent of such defendant corporation who authorized, ordered or did such act in whole or in part.

"Likewise, the list of defendants includes a number of labor union organizations and several members thereof. It has been stipulated in this case that these labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that act, separately and apart from the guilt or innocence of their members.

"You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents.

"The indictment contains many paragraphs. I am not going to read it, but will endeavor to summarize it for you. Understand, you are concerned only with Count I, as Count II has been dismissed. The indictment is divided into eight parts. The first three deal with the general background of the millwork and patterned lumber industry. The fourth and fifth describe the defendants and their power to restrain and obstruct interstate commerce. The sixth contains count one; the seventh tells of

the effect of the alleged conspiracy, and the eighth relates to jurisdiction and venue. You will, of course, be permitted to take the indictment with you to the jury room.

"The indictment in substance charges that the labor union defendants and the non-labor defendants combined and conspired together to restrict, suppress and eliminate competition in the marketing of millwork and patterned lumber moving in interstate commerce, by excluding manufacturers of millwork and patterned lumber located in states other than California, from selling and [868] delivering such millwork and patterned lumber in the San Francisco Bay Area, and by preventing purchasers of millwork and patterned lumber located in the San Francisco Bay Area from purchasing millwork and patterned lumber manufactured in states other than California; all of which had or was intended to have the effect of controlling the market in millwork and patterned lumber moving in interstate commerce into the San Francisco Bay Area, and of raising, maintaining, and stabilizing the price of such millwork and patterned lumber and depriving purchasers or consumers located in the San Francisco Bay Area of the advantages which they would otherwise derive from free competition.

"The combination and conspiracy, as alleged in the indictment, therefore, had three objects, the first being to exclude manufacturers of millwork and patterned lumber located in states other than

California from selling and delivering such material into the San Francisco Bay Area, the second being to prevent purchasers of millwork and patterned lumber located in the Bay Area from purchasing such material from manufacturers located in states other than California, and the third being to raise, maintain and stabilize the price of millwork and patterned lumber in the Bay Area and thus deprive purchasers or consumers of the advantages derived from free competition.

"I shall hereafter instruct you as to what constitutes a combination and conspiracy in this type of case, but at this point, I will say that if, upon a consideration of the whole case, you find beyond a reasonable doubt that there was a combination and conspiracy among the defendants, and that the purpose of the parties to the same was to accomplish any one of these three objects, then the Government has sustained its burden under the indictment. It is not incumbent upon the Government to prove that all three of these stated objects were sought or attained. Proof of one is sufficient. [869]

"In order to establish the crime charged, it is necessary, first, that the combination and conspiracy to commit the offense charged in the indictment be established, and secondly, to prove further that one or more of the parties engaging in the conspiracy has committed some act to effect the object thereof.

"To constitute a combination and conspiracy it

is not necessary that two or more persons should meet together and enter into an express or formal agreement for the unlawful venture or scheme, or that they should directly, by words or in writing, state between themselves or otherwise what the unlawful plan or scheme is to be, or the details thereof, or the means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design: In other words, when an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the combination and conspiracy. The success or failure of the combination and conspiracy is immaterial, but before the defendants may be found guilty of the charge it must appear beyond a reasonable doubt that a combination and conspiracy was formed as alleged in the indictment, and that the defendants were parties thereto.

“In order to warrant you in finding a verdict of guilty against the defendants, or any of them, it is necessary that you be satisfied beyond a reasonable doubt that a combination and conspiracy as charged in the indictment was entered into between two or more of the defendants to violate the law of the United States in the manner described in the in-

dictment. It is necessary further that, in addition to the showing of the unlawful combination and conspiracy, the Government prove to your [870] satisfaction, beyond a reasonable doubt, that one or more of the acts described in the indictment was done by one or more of the defendants or at their direction or with their aid.

"Under the charge made the combination and conspiracy constitutes the offense and it must be made to appear from the evidence, beyond a reasonable doubt, before any defendant can be convicted, that such defendant was a party to the combination and conspiracy, and that he continued to be such up to the time that acts were committed in furtherance thereof, if the evidence shows that there were any such. The mere fact that any of the defendants named may have engaged in the performance of any of the acts charged in the indictment would not authorize a conviction by reason of that fact alone, but it is necessary to show that the defendants were parties to the combination and conspiracy before their guilt of the offense charged is made out.

"Each party must be actuated by a purpose to promote the common design. If persons pursue by their acts the same unlawful object, one performing one act, and a second another act, all with a view to the attainment of the object they are pursuing, the conclusion is warranted that they are engaged in a combination and conspiracy to effect that object. Cooperation in some form must be shown. There must be participation in the trans-

action with a view and purpose to further the common design. And if a person, understanding the unlawful character of a transaction, encourages, advises, or in any manner, with a purpose to forward the enterprise or scheme, assists in its prosecution; he becomes a conspirator. And so a new party, coming into a combination and conspiracy after its inception, with knowledge of its purpose and object, and with intent to promote the same, becomes a party to all of the acts done before his introduction into the unlawful combination, as well as to the acts done afterwards. Joint assent and joint participation in the combination and conspiracy may be [871] found, like any other fact, as an inference from facts proved.

“Where the existence of a combination and conspiracy has been shown, every act or declaration of each member of such conspiracy, done or made thereafter pursuant to the concerted plan, and in furtherance of the common object, is considered the act and declaration of all of the conspirators and is evidence against each of them. On the other hand, after a conspiracy has come to an end, either by the accomplishment of the common design, or by the parties abandoning the same, evidence of acts or declarations thereafter made by any of the conspirators can be considered only as against the person doing such acts or making such statements. The declaration or act of a conspirator not in execution of the common design is not evidence against any of the parties other than the one making such declaration.

The evidence in proof of a combination and conspiracy may be circumstantial. Where circumstantial evidence is relied upon to establish the combination and conspiracy or any other essential fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy or fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion. That is, you are to consider all of the circumstances and conditions shown in evidence, and if it appears to you as reasonable men and women that, even though there is no direct evidence of the actual participation in the alleged offense by the defendants or any of them, a reasonable inference from all of the facts and circumstances does to your minds, beyond a reasonable doubt, show that the defendants, or some of them, were parties to the combination and conspiracy as charged, then you should make the deduction and find accordingly.

"It is not necessary that it be shown that any person concerned in the alleged combination and conspiracy profited by [872] the things which he did, but if any of the defendants, with knowledge that the law was designed to be violated in the particular manner charged in the indictment, aided in any way by affirmative action in the accomplishment of the unlawful act, they would be guilty. To this statement there is one exception, and that is, if before any act has been committed on the part of any conspirator or at his suggestion or with his aid

or participation, any such conspirator withdraws from the conspiracy and wholly disassociates himself from the project or the carrying out thereof, he ceases to be a conspirator and is without guilt.

“By the finding of an indictment no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

“Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

“In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or

other bias, to apply a strained [873] construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion. And, whenever, after a careful consideration of all of the evidence, your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

"You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. Witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men and women. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the Government or the defendants, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his

credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

"The individual defendants have offered themselves as witnesses and have testified in the case. They having done so, [874] you are to estimate and determine their credibility in the same way as you would consider the testimony of any witness. It is proper to consider all of the matters that have been suggested to you in that connection, including the interest that the defendants may have in the case, their hopes and their fears, and what they have to gain or lose as a result of your verdict. You are not limited in your consideration of the evidence to be bald expressions of the witnesses; you are authorized to draw such inferences from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable persons.

"Statements of counsel during course of trial or in argument are not evidence in the case.

"If there is a variance between statements made by counsel as to what has been proven and what the record shows, to the extent that there is a variance you will disregard the statements of counsel and adhere to the record.

"Parties have a right to appear by counsel, and it is the privilege of counsel to address the jury on the facts. Counsel have a right to discuss the case

in all its aspects, and so long as they do not go outside of the case, they cannot be restrained by the Court. It is impossible to lay down any general rule as to what shall or shall not be said. Much latitude is always allowed in the argument of a cause before a jury.

“The true view of the position of counsel, before the jury, is that of assistants. They are officers of the Court, amenable to its authority, subject to its correction, and restrained by usages of honor and courtesy, which are as ancient in their origin and as potent for good, and as generally respected, as any usages which belong to any class of the highest grade of civilized man. The duties of the advocate are among the most elevated functions of humanity. He is the representative of his client's [875] cause, but these considerations insure an honorable advocacy. His business is to comment on the evidence, to sift, compare, and collate the facts, to draw his illustrations from the whole circle of the sciences, to reason with the accuracy and power of the trained logician, to enforce his cause with all the inspirations of genius, and adorn it with all the attributes of eloquence. It is the duty of the jury to listen, but no matter how charming the eloquence or how interesting the battle of wits between opposing counsel, you are to remember that you are not trying the attorneys in this case. You are the sworn judges of the cause, bound by the most solemn sanctions to do justice between the parties according to the evidence and the law.”

"If you find that weaker and less satisfactory evidence is offered and relied on in support of a fact, when it appears that stronger and more satisfactory evidence could have been produced by the party offering it, such weaker evidence should be viewed with distrust.

"You must bear in mind that the character of evidence which would warrant a verdict in a civil case is different from that necessary to warrant a conviction in a criminal case. In a civil case, mere preponderance of evidence would be sufficient to warrant a verdict, but a criminal case requires evidence of the guilt of a defendant beyond a reasonable doubt.

"The law presumes, unless evidence to the contrary is produced, that the character of the defendants for truth, honesty and integrity is good. The good character of a defendant is a fact tending to show the improbability of his having committed a crime and tends in a greater or less degree to establish his innocence. Such good character, when considered in connection with the other evidence in the case, may generate a reasonable doubt of his guilt.

"I have spoken of interstate commerce. As stated, it [876] consists of the shipment of commodities or materials from one state to another. In this case the question is whether the labor union defendants entered into a combination with the non-labor defendants whereby the defendants intended to or did bring about an undue restriction of or interference with interstate commerce in mill-

work or patterned lumber. It is the nature of the restraint and its effect on interstate commerce, and not the amount of the commerce which are the tests of violation.

“If a group of California lumber dealers should stop a truck coming from Oregon loaded with lumber because they did not want any Oregon lumber in California and prevent its entry, that is an unreasonable interference with interstate commerce, although it involves only one truckload of lumber.

“If you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork manufactured in States outside the State of California; or if you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase and the labor union defendants agreed not to work on any patterned lumber or millwork manufactured under conditions unfair to the employer defendants including patterned lumber and millwork manufactured outside the State of California; such an agreement or understanding would constitute a violation of the Sherman Act as charged in the indictment. It would constitute no defense under the law, either

to the employer defendants or to the labor union defendants that the agreement or understanding may have been arrived at in settlement of a labor dispute; and it would likewise constitute no defense under the law that any such [877] agreement or understanding may have been arrived at as the result of proceedings in arbitration of such a dispute.

“If you find that the employer and labor union defendants entered into a combination and conspiracy, the object of which was to prevent the purchase or importation by the employer defendants or other persons, firms, corporations, or parties within the State of California of patterned lumber and millwork manufactured under conditions unfair to the employer defendants including patterned lumber and millwork manufactured outside the State of California; or if you find that the employer and labor union defendants entered into a combination and conspiracy, the object of which was to prevent the purchase or importation by the employer defendants or other persons, firms, corporations, or parties within the State of California of patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork manufactured outside the State of California, such a combination and conspiracy would constitute a violation of the Sherman Act, as charged in the indictment. It would constitute no defense under the law, either to the employer

defendants or to the labor union defendants, that the combination and conspiracy may have been arrived at as the result of the settlement of a labor dispute; and it would likewise constitute no defense under the law that any such combination and conspiracy may have been arrived at as the result of proceedings in arbitration of such a dispute.

“Labor unions or their members may join together in promoting their self-interest, even though their acts in so doing may result in an undue obstruction of interstate commerce. But they can do this only so long as they act in their self interest and do not combine with non-labor groups. Here the Government charges that the labor union defendants combined and conspired with the non-labor defendants in entering into and doing the things [878] complained of, which charge, if true, is a violation of the Sherman Act. So, if any one or more of the labor union defendants combined and conspired with any one or more of the non-labor defendants, including those pleading nolo contendere, to do the things that the Government charges here, even though the motive of the labor union defendants was to promote their self interest, you must find the defendants, or any of them, who so combined and conspired, guilty as charged.

“Some testimony has been heard here concerning the union label of the United Brotherhood of Carpenters and Joiners of America. In this connection, I charge you that whether the millwork and patterned lumber involved in the testimony in this

case was manufactured in mills whose employees were members of the United Brotherhood of Carpenters and Joiners of America or of its affiliated unions, or whether such millwork and patterned lumber bore a union label is not to be considered by you. The sole question is whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants.

"The fact that the contracts introduced in evidence also included a clause which has often been referred to in the course of this trial and which recites that nothing in the contract is to be interpreted as to in any way interfere with any business of the Federal Government or that of an interstate common carrier or any regulation of the Federal Trade Commission or the Sherman Antitrust Laws is not conclusive as to the purpose of the contracting parties.

"In this case, several individuals are named as defendants, together with a number of corporations. While these defendants have been jointly indicted and charged with the offenses contained in the indictment, each defendant is entitled to an independent consideration by you of the evidence as it relates to his conscious [879] participation in the alleged unlawful acts, and it is your duty to determine the guilt or innocence of each individual separately. You will understand that you may convict or acquit any or all of the defendants as the

facts may warrant. This applies to corporations, associations and individuals alike.

“There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which persons give their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendants are entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his or her own view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you. Any testimony as to which an objection was sustained, any testimony which was ordered stricken out, must be wholly left out of account and disregarded. The opinion of the judge as to the guilt or innocence of a defendant, if directly or inferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury. For to the jury exclusively belongs the duty of determining the facts.

The law you must accept from the court as correctly declared in these instructions. Your verdict must be unanimous.

"After you have entered the jury room, you will choose one of your number to act as foreman. The Clerk has prepared [880] merely for your convenience a form of verdict. After the entitlement of Court and Cause, it reads as follows:

"We, the Jury, find as to the defendants at the bar on the First Count of the Indictment as follows:"—then follows a list of names of the defendants on trial. Opposite each name is a blank space where your foreman will record your verdict when you have agreed on one, and after your verdict has been filled out and signed by your foreman, you will be returned to court to announce your verdict.

"(The officers were thereupon sworn to take charge of the jury.)" [881]

"The Court: Now, gentlemen, you may state your exceptions.

"Mr. Howard: If the Court please, I assume that our statements will cover all of the union defendants and they probably may be supplemented by any other counsel.

"I wish to take the following exceptions to the charge, if your Honor please. Referring to the proposed instructions of the union defendants, we wish to except to the Court's not giving instructions No. 55, 56, 57 and 58 relating to the binding effect of representatives acts on the union defendant organizations, and with reference to the knowledge

of the union organizations of those acts. I assume that I should restrict myself to the numbers.

"The Court: I think so. I think that will be sufficient.

"Mr. Howard: We except, take the same exception to the refusal to give the following numbered instructions: 59, 60, 61, 62; 63, 64, 65, 66, 67, 68, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91 and consecutively right on through to 100, 101, 102, 105; that relates to the charge as refused to be given, of course.

"We wish to except to the charge that if it is found that the union defendants combined with non-labor defendants, then the motives or purposes of the defendants were immaterial, that evidence relating to the purpose or motive or reasons would not excuse the union defendants.

"We object, or, rather, we wish to, except expressly to the charge that we determine the guilt or innocence of the labor union defendants in the same way that you would the corporations with reference to the acts of their representatives and agents and with reference to the knowledge necessary to bind the union organizations, we take that exception. We except to the charge that where we find an employer and a labor union [882] defendant agreeing not to purchase lumber under different wage scales and affecting out of state lumber, or where they agree not to work on such material or lumber that is unfair to the employer, that such is a violation in and of itself of the Sherman Act; that

there is no defense here by reason of the fact that any contract or agreement or understanding was arrived at in settlement of a labor dispute, the charge that the existence or non-existence of a labor dispute here is immaterial, that is no defense that any contract was as a result of a proceeding, for arbitration of a labor dispute, or as a result of such arbitration and the fact that if the parties entered into a conspiracy not to work on material unfair to employers, regardless of their motives or intent on the part of the union defendants such would constitute a violation of the Act—I am referring to the Sherman Act.

“The Court: Yes.

“Mr. Howard: And if a conspiracy was entered into not to purchase or work upon lower wage scale material, affecting materials from outside the State of California, that that in and of itself would constitute a violation of the Sherman Act regardless of motive, intent or objectives with which the union defendants were acting, and it is no defense that any activities here resulted from labor disputes.

“I think, your Honor, that is just about what the—

“The Court: Well, if you should think of anything else—

“Mr. Howard: Yes. Then I understand the proposed instructions may become a part of the record.

“The Court: Yes. I am going to so instruct the clerk to bind them properly and file them.

"Mr. Howard: Your Honor understands the difficulty of compiling these exceptions so hurriedly, so if it can be supplemented in part by other counsel—— [883]

"The Court: Yes, I understand.

"Mr. Kerwin: There will naturally be a certain amount of duplication in the exceptions that I have.

"The Court: I think that is all right.

"Mr. Kerwin: It won't take me more than a few minutes to do what I propose to do, your Honor. I wish to take exceptions. For the purpose of brevity, also due to the difficulty of taking notes at a time like this, I think you will find that in the exceptions I am orally stating now, I am supplementing those stated by Mr. Howard.

"I except first, your Honor, to the portion of your Honor's charge which in effect characterized the nolo conderere pleas of the other defendants as admissions of guilt, and, in other words, to that part of the charge with respect to nolo contendere.

"I also except to your Honor's charge with respect to the associations or corporations and your definition of them as being in substance separate entities, similar entities, and that they could be similarly found guilty upon the basis of acts of certain individuals associated with them.

"I likewise except specifically to that portion of the charge in this connection dealing with the responsibility of unincorporated associations, particularly such as that involved here, for the acts of its agents.

"I also except to your Honor's definition of mill-work and patterned lumber as stated in your charge. And, of course, to the statement contained in the charge dealing with common purpose or design and in effect, inferentially, at least, referring to the subject of intent or motive at that particular point in the charge.

"I except further in connection with your Honor's description of the nature of the restraint and your statement, in effect, that the nature of the restraint and not the amount was the sole test of guilt. [884]

"The Court: You will find that in the case of—

"Mr. Kerwin: I am saying that, your Honor.

"The Court: Pardon me; I did not mean to interrupt you.

"Mr. Kerwin: I am referring to that portion of your charge, I stated before it was impossible for me to write in all these notes—

"The Court: Yes. Pardon the interruption.

"Mr. Kerwin: That is quite all right.

"I also wish to except to that portion of your Honor's charge dealing with the matter of the lower wage scale not being a matter of defense, but in effect being a substantial ground for conviction. And to that portion of the charge to the effect that conditions unfair to the employers would not excuse the actions here and would in effect, standing alone, constitute a violation of the statute. Further, in that connection, with respect to the fact that in the

arrival at the agreement there was no defense, rather, that the agreement was arrived at in settlement of a labor dispute, or in the arbitration of such a dispute being deemed by your Honor not to be a defense.

"I also except to the portion of the charge of your Honor which in effect states that an agreement to prevent the importation of unfair material was no defense, and, likewise, in that connection, to that portion of the charge stating in effect that an agreement to prevent importation of lower wage scale material is no defense; as, likewise, the statement that the agreement was arrived at in the settlement of a labor dispute, or the arbitration of a dispute, is no defense.

"I also except to that portion of your Honor's charge which in effect stated that the mere fact of an agreement with a non-labor defendant under the circumstances described in your Honor's charge would amount to a violation of the statute; also in that connection, the statement, in effect, that to promote [885] self-interest was no defense, and, furthermore, to that portion of the charge which in substance stated that the protection of the label or the use or non-use of the label was not to be considered by the jury.

"Next and finally, I wish to except to that portion of your Honor's charge which in effect stated that the sole question to be determined by the jury is whether or not there was a restraint of commerce pursuant to an agreement, and likewise,

finally, to that portion of your Honor's charge which in effect states that the provision with respect to a non-violation of the four phases of the Federal statutes contained in the several agreements would not be deemed as conclusive with respect to purpose.

"As I said before, I join in the exceptions taken by Mr. Howard, both as to denials by your Honor and also with respect to those affirmatively given to which I have just referred.

"Mr. Howard: If the Court please, if it may be understood, I am likewise joining in Mr. Kerwin's statements.

"The Court: Yes.

"Mr. Howard: In those that I did not mention to your Honor.

"The Court: Yes.

"Mr. Todd: The defendant Alameda County Building and Construction Trades Council asks its exception be noted to your Honor's failure to give instructions 1 to 13 inclusive, and we ask to concur in the exceptions made by other counsel to the instructions actually given.

"The Court: Very well.

"Mr. Faulkner: Your Honor, I join in the exceptions taken by Mr. Howard and Mr. Kerwin, and in addition thereto, your Honor, in connection with the charge made by the Court, your Honor in the commencement of the charge, or, after you had reached a stage in the charge where you had defined the employer group and the union labor group,

you indicated to the jury, as [886] I recall your charge in substance, that if they believed a combination or conspiracy existed and there was participation by either the labor group or the employer group, they would be guilty of the charge, and the element which your Honor left out, as I heard the instructions, was that the participation must be with knowledge of the combination.

"The Court: The reason I was smiling at you, Mr. Faulkner, I was wondering if I left anything out.

"Mr. Faulkner: Well, your Honor, the way I heard it, I think I did not hear the element of knowledge with relation to participation.

"The Court: I think it is all in there.

"Mr. Faulkner: Well, I may—you know, your Honor, when you sit there, and my hearing is not as good as it should be. Your Honor in the course of your charge paraphrased the indictment and indicated that the conspiracy was the basis of the charge. You ran through the various paragraphs of the indictment and then you came back in the charge and described the purpose of the conspiracy, the purpose of the conspiracy as declared in the instructions added to the purpose set forth in the indictment particularly in accentuating something in relation to the effect on the public paying more for lumber, and the exception I have, your Honor, is that your Honor went further into the purpose in the charge than the indictment did itself.

"Your Honor covered a series of instructions

concerning employers and unions agreeing not to purchase——

“The Court: Yes.

“Mr. Faulkner: You paraphrased the language——

“The Court: I know, but isn't that taken care of by the exceptions of Mr. Howard and Mr. Kerwin?

“Mr. Faulkner: That is what I was going to say. I think all of those have been covered, with the exceptions of Mr. [887] Howard and Mr. Kerwin, in which we join. Now, with respect to the proposed instructions of defendants, your Honor suggested, as I understood it, that we do that by number.

“The Court: How many requests do you suppose were offered?

“Mr. Faulkner: Too many.

“The Court: I will give you a guess.

“Mr. Faulkner: I imagine about two hundred.

“The Court: 286; enough of them.

“Mr. Faulkner: We except, your Honor, to the failure to give proposed instructions 27 to 31, inclusive, on the subject matter of accomplices.

“The Court: Can you designate those instructions to make it more sufficient?

“Mr. Faulkner: Yes, your Honor. 27 to 31 inclusive, the subject matter of the manner in which your Honor should consider the testimony of, an accomplice, or a jury should consider——

"The Court: There was no accomplice in the case.

"Mr. Faulkner: Yes, your Honor. There was one or two of the witnesses who had signed the original contract involved in this case.

"The Court: I don't remember any accomplice on the stand.

"Mr. Faulkner: Mr. Buckley, the witness, he had signed the contract, and the contract was in evidence. Then there was a series of instructions, your Honor, that we next proposed that were on the subject matter of intent in joining a conspiracy, proposed instructions 42 and 43. Then we have a series of instructions, your Honor, on conspiracy and mere knowledge without participation is not an offense, participation without knowledge. Those instructions are numbered 44, 45, 46, 47, 47-A, 48, 49, 49-A. Your Honor will recall that one of the points that we made from time to time in the case was that the participation of a defendant in a conspiracy could not be es- [888] tablished by the declaration of one conspirator to another, it must be established by the conduct and the acts of the conspirator himself, based on the Kuhn case. Those were instructions 49, 49-A and 49-B.

"The question of intent, your Honor, in instructions 52 to 52-D.

"On the subject of circumstantial evidence being consistent with guilt or innocence, your Honor gave one instruction that touched upon that matter. I

don't think that the elements of that clearly indicated to the jury that it is their duty to follow the road of innocence where two roads may be followed.

"The Court: I think it was.

"Mr. Faulkner: Pardon me, your Honor?

"The Court: I thought it was.

"Mr. Faulkner: Well your Honor, at all events, you know that we proposed several instructions—

"The Court: Yes.

"Mr. Faulkner: And we except to the failure to give the instructions proposed.

"The definition of a labor dispute, proposed instructions 70, 71; right of the defendants to negotiate the agreement, instruction 72; what constitutes a bona fide labor dispute, 74-A; we except to the failure to give those; failure to give the instruction the authority of an agent is not to be presumed; the instructions based upon the Norris-LaGuardia Act, instruction 64; instruction 65, based upon that Act; 68, based upon a definition of a labor dispute, taken from the Hinton case. That is also instructions 69 and 70, 71. Instruction 77, the intent with regard to the conspiracy, 78, based upon the Norris-LaGuardia Act; instruction 61, that under the National Labor Relations Act, an employer is compelled to bargain collectively. [889]

"Then, your Honor, we proposed some additional instructions last week based on that contract of September 21: 'I charge you that entering into the contract in evidence here dated September 21, 1936, by the parties thereto did not in and of itself con-

stitute a violation of the Sherman Anti-Trust Act.' And the contract of 1938, and the other one following June 15, the date of the arbitration award, and the one dated October 18, 1938, did not in and of itself violate the Sherman Act; I refer to the instruction in effect that 'It is not a violation of the Sherman Act for an employer and a union, representing employees of the employers, to enter into a contract fixing a definite wage scale and to therein provide that said union members shall not work for others in the same economic area within a State at a lesser or lower wage scale.'

"Also, the failure to give the instruction: 'It is provided in the contract of September 21, 1936, and in both of the contracts entered into in the year 1938 as follows:

" 'Nothing herein is to be interpreted as preventing' etc.

"This paragraph contained in each of these contracts must be considered by you, together with all of the other provisions in the contract, in order to determine the contract entered into between the parties thereto."

"Also, to the same effect: 'I charge you that in the agreement of September 21, 1936, and the subsequent agreement of 1938, that is the agreement entered into immediately following the arbitration award of July 15, 1938, and the contract amending the same dated October 18, 1938'—This is the last one that was proposed by us; does that identify it for your Honor?

"The Court: How many in that list?

"Mr. Faulkner: There are six.

"The Court: Yes, six. Yes, I know.

"Mr. Faulkner: And I covered that in the last six instruc- [890] tions proposed, and we except to the failure to give them.

"The Court: Yes.

"Mr. Faulkner: I think, your Honor, Mr. Adams and I disagreed on one instruction with regard to the instruction defining millwork and patterned lumber. My recollection was that your Honor gave the instruction to the jury exactly as in the indictment, but Mr. Adams states that you added to that that millwork and patterned lumber include such wood products and such things as fixtures—

"The Court: Yes. There is a portion of it that is quoted. I quoted: 'Lumber which has been planed, cut, or assembled into standard or special patterns or forms, such as molding, sash, doors, tongue and groove pattern, shelf pattern, flooring, casing, rustic ceiling, rustic siding, and other products prepared for use in the construction of dwellings, buildings, fixtures and store fronts. It shall also include all work and the products thereof used in the construction of prefabricated buildings.'

"Mr. Faulkner: Yes, I think your Honor followed the indictment. We don't except to that, your Honor.

"The Court: That is where I took it from.

"Mr. Faulkner: We proposed an instruction,

your Honor; I am sure your Honor will identify it, to the effect that the restraint in interstate commerce must be unreasonable. We except to the failure to give that instruction.

"The Court: Yes, I remember that.

"Mr. Faulkner: Is that a sufficient identification?

"The Court: Yes, I remember it.

"Mr. Faulkner: Your Honor instructed that the stoppage of one carload of lumber would be enough and we proposed an instruction on the subject that sufficient instances of the stoppage of articles in interstate commerce—we except to [891] the one your Honor gave and the failure to give the one we proposed.

"Mr. Bacigalupi: Your Honor, will it be understood that all the instructions excepted to, proposed and excepted to by Mr. Faulkner, may it be understood I join in those, and ask for the benefit of all exceptions made by other counsel.

"The Court: Yes.

"Mr. Kerwin: Your Honor, may I make just one more short request. As I understand it, it was your Honor's thought that where the exception was applicable and unless someone signified an intention to the contrary, the exception was to be available to all. Now, with respect to these exceptions to the charge, you said 287; we have been passing these things back and forth, or exchanging them, and I can well imagine they might have gotten beyond 287. I want to just make sure we all understand

that all of the exceptions to the charge of your Honor redound to the benefit of all the individuals, associations, corporations, or all the defendants of any character, whether proposed by—no matter who proposed by, each will receive the same benefit of that.

“The Court: I see no objection to it. It is agreeable to me.

“Mr. Howard: May it also be understood, your Honor, I realize the difficulty of reporting exceptions of this nature in the manner done; I presume we can stipulate as to any necessary corrections. Would that be agreeable to the Government?

“The Court: I don't want any request for—I don't think that would be the proper thing to do. State your exceptions if you have any.

“Mr. Howard: I mean as to the inaccuracies of reporting.

“The Court: Oh, well, I don't imagine there would possibly be any trouble about that. [892]

“Mr. Faulkner: There is one instruction that your Honor failed to give, instruction No. 5, to the effect that your definition that millwork or patterned lumber does not include cabinet fixtures and store fronts.

“The Court: Yes.

“We will take a recess.

(The jury returned into court at five p. m., December 12, 1941.)

“The Court: United States v. Lumber Products Association, et al. The jurors are present.

"Ladies and gentlemen, have you agreed upon a verdict?

"The Foreman: We have, your Honor.

"The Court: You will hand it to the Bailiff. The Clerk will read the verdict.

"The Clerk: Ladies and Gentlemen, hearken unto your verdict as it will stand recorded.

"We, the Jury, find as to the defendants at the bar on the First Count of the Indictment as follows:

"Brass & Kuhn Company; Guilty.

"Commercial Fixture & Store Front Institute; Guilty.

"Fink & Schindler Co.; Guilty.

"L & E Emanuel, Inc.; Guilty.

"Mangrum, Holbrook & Elkus, a corp.; Guilty.

"Mullen Manufacturing Company; Guilty.

"Alameda County Building & Construction Trades Council; Guilty.

"The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; Guilty.

"The United Brotherhood of Carpenters and Joiners of America; Guilty.

"The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42; Guilty.

"The United Brotherhood of Carpenters and Joiners of [893] America Millmen's Union No. 550; Guilty.

"J. F. Cambiano; Guilty.

"Joseph L. Emanuel; Guilty.

"J. G. Ennes; Guilty.

"Charles Helbing; Guilty.

"C. H. Irish; Guilty.

"W. P. Kelly; Guilty.

"Walter O'Leary; Guilty.

"John Mullen; Guilty.

"Emil H. Ovenberg; Guilty.

"Charles Roe; Guilty.

"Dave Ryan; Guilty.

"W. L. Wilcox; Guilty.

"The Court: Thank you, Ladies and Gentlemen; you are excused until further notice. You may now retire." [894]

[Title of District Court and Cause.]

INSTRUCTIONS REQUESTED BY CERTAIN UNION DEFENDANTS

Now come the defendants Bay Counties District Council of Carpenters, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, the United Brotherhood of Carpenters and Joiners of America, Jr. F. Cambiano, Dave Ryan, James Ricketts, Charles Roe, Charles Helbing, D. J. Edwards, W.

P. Kelly, H. Lidley, W. L. Wilcox, Walter O'Leary, M. D. Cicinato, [895] J. P. Sholden, C. H. Irish, Otto W. Sammet, Emil H. Ovenberg and George Smoot and hereby present the following proposed instructions for the jury and request the Court to give such instructions, and each of them, and each part of each of them; to the jury upon the submission of the case, and said defendants hereby so move the Court, requesting further the right to propose additional requests for instructions prior to the opening of the argument upon questions arising during the trial.

Dated: November 21st, 1941.

JOSEPH O. CARSON
JOSEPH O. CARSON, II
CHARLES H. TUTTLE
THOMAS KERWIN
HARRY N. ROUTZOHN
HUGH K. McKEVITT
JACK HOWARD

Attorneys for said Defendants.

Instruction No. 55

You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to

find that the union had authorized or ratified the act.

U. S. v. Int. Fur Workers (1938); 100 Fed. 541, 547. (2nd Cir.)

Instruction No. 56

You are instructed that no labor union or organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find [896] upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof.

Norris LaGuardia Act, 47 Stat. 71; 29 U. S. C. A. Sec. 106.

Instruction No. 57

You are instructed that an international trade union, that is, the international body, is not responsible for the acts of a district organization or union affiliated with and chartered by it except as such international body expressly authorizes the act of the local union or association. The International Brotherhood of Carpenters and Joiners of America cannot be found guilty in this case unless you find that it authorized acts to be done, or performed such acts with the intent of restraining interstate commerce pursuant to a conspiracy with the employer defendants to act as the instrument of the employers to suppress competition.

Coronado v. United Mine Workers (1925) 268 U. S. 295.

Instruction No. 58

You are instructed that no individual defendant who is an officer or member of one of the labor organizations involved can be found guilty in this case for an unlawful act, or acts, if any, of other officers, members or agents of such union organizations, except upon clear proof from the evidence that such individual defendant actually participated in or actually authorized such an act or ratified such unlawful act, if any, after actual knowledge thereof.

Norris LaGuardia Act, 47 Stat. 71; 29 U. S.

C. A. Sec. 106. [897]

Instruction No. 59

This is not a civil case. It is a criminal prosecution. In such cases, a criminal intention must accompany the act in order to constitute a crime. And the act itself, while it may be the basis for the inference of a criminal intention by the jury, if unaccompanied by such criminal intent, is not crime.

Instruction No. 61

Under the penal provisions of the Sherman Act, upon which the indictment in this case is based, it devolves upon the prosecution to prove beyond a reasonable doubt that the defendants had a criminal intent, and criminal intent means an intent or purpose to do knowingly and wilfully that which is condemned as wrong by the act.

Instruction No. 62

You are instructed that intent is a fact to be

proved as any other fact; it is the state of mind from which an act is done; it is the motive from which an act springs. While the law presumes that a person intends the natural and probable consequences of acts intentionally done, and that an unlawful act implies an unlawful intent, such presumption does not arise from an act or series of acts which are not of themselves unlawful. The burden of establishing an illegal intent is upon the prosecution and continues throughout the case until it is proven by the evidence, to the exclusion of reasonable doubt, that an illegal intent exists.

McKnight v. U. S. (1902) 115 Fed. 972 (6th Cir.)

Instruction No. 65

You are instructed that the Sherman Act is not aimed at [898] the policing of interstate transportation or movement of goods. You are instructed that a labor union has a constitutional right to picket any railroad car or other container of products which is considered unfair to union labor because of the conditions of employment under which such products have been produced in order to advertise to the world that such goods are unfair. You are further charged that any person may lawfully decline to work upon or handle such products considered unfair to the labor organization with which he is affiliated and none of such acts is unlawful under the Sherman Act.

Apex Hosiery v. Leader (1940), 310 U. S. 469;

Thornhill v. State of Alabama, (1940), 310
U. S. 88;

Clayton Act, Sec. 6-20, 38 Stat. 730;

Norris-LaGuardia Act, 47 Stat. 29.

Instruction No. 66

You are instructed that one party to an agreement may violate the Sherman Act, whereas the other party may not because of the difference in intent and motives which may actuate the making of the contract and its performance.

Hood Rubber v. U. S. Rubber Co., (1916), 229
Fed. 583 (D. C. Mass.)

Instruction No. 67

You are instructed that parties to an agreement may enter into it actuated by different motives and intent. You are instructed that if the labor defendants entered into the agreements involved in this case for the purpose of furthering their own interests and labor objectives—and not merely as tools or instruments to carry out some wrongful intent, if any, [899] of the employers, then even though you should find the existence of a wrongful intent on the part of the employers, you are instructed that you must acquit the labor defendants and they are not guilty of the charges contained in the indictment.

Apex Hosiery v. Leader (1939), 310 U. S. 469;
Hood Rubber vs. U. S. Rubber Co., (1916), 229
Fed. 583 (D. C. Mass.).

Instruction No. 68

You are instructed that as to every individual defendant affiliated with the labor unions you should return a verdict of acquittal unless you find that he was not acting in furtherance of the legitimate objects of his labor union, but on the contrary was acting in combination with the employer defendants with the intent to restrain interstate commerce in millwork and patterned lumber in order to eliminate competition and effect prices of such interstate commerce.

Clayton Act, Sec. 6-20, 38 Stat. 730;

Norris-LaGuardia Act 47 Stat. 29.

Instruction No. 75

You are instructed that if you believe from the evidence that the union defendants in making and carrying out the agreement of September 21st, 1936 and any renewals thereof were acting in their own self interest to carry out legitimate objectives of labor, such as the creation of a uniform standard of wages for the industry, the improvement of wages, the gaining of employment or the unionization of other mills in the industry, the fact that some or all of the employers had a different or ulterior motive in making and carrying out the agreement would not make such activities on the part of the union defendants unlawful but, on [900] the contrary, the carrying out of such objects through the medium of the agreement would be lawful and not a violation of the Sherman Act on the part of the union defendants.

U. S. v. B. Goedde Co. (D. C. E. D. Ill.—Sept. 5th, 1941—Judge Lindley—not yet reported)
46 Fed. Supp. 523.

Instruction No. 76

An attempt to unionize non-union workers and improve working conditions of labor employed in an industry involves a labor dispute within the meaning of the Norris-LaGuardia Act, and such activity on the part of a labor union is therefore exempted from the operation of the Sherman Act, and does not violate that Act.

Drivers Union v. Lake Valley Co. (1940), 311 U. S. 91;

U. S. v. Hutchison (1941), 312 U. S. 219.

Instruction No. 77

You are instructed that a labor dispute "includes any controversy covering terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." A person is participating or interested in a labor dispute if he is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation.

Norris-LaGuardia Act 47 Stat. 730, Sec.
13B-C. [901]

U. S. v. Hutchison (1941), 312 U. S. 219.

Instruction No. 78

In determining whether a case involves or grows out of a labor dispute the words "terms or conditions of employment" are not limited to meaning only the ordinary case where one person hires out to another for a stipulated wage or salary. Employment means act of employing or state of being employed; that which engages or occupies or which consumes time or attention. A case involves or grows out of a labor dispute when it involves persons engaged in the same industry, trade, craft or occupation, or who have direct or indirect interests therein and a person or association shall be held to be participating or interested in a labor dispute if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs. The term "labor dispute" includes any controversy concerning terms or conditions of employment.

You are, therefore, instructed that the agreement of September 21, 1936 between employers and the union organizations which resulted from negotiations to fix terms and conditions of employment involved and grew out of a labor dispute and the making of such agreement on the part of the union defendants was not a violation of the Sherman Act. You are further instructed that the carrying out of and enforcement of such agreement by the union

defendants through peaceful means such as picketing, strikes or threats to strike would not violate the Sherman Act on the part of the union defendants. You are further instructed that a conspiracy or combination to accomplish what is lawful by lawful acts or agreements on the part of an alleged conspirator cannot be unlawful. [902]

U. S. v. Goedde Co. (#15253 D. C. E. D. Ill.—

Judge Lindley—Sept. 6, 1941—not yet reported) 46 Fed. Supp. 523

Hinton v. Colombia River Packing 117 F. 2d 310 (9 cir—1941)

Milk Drivers Union v. Lake Valley Inn 311 U. S. 91 (1941)

Instruction No. 79

You are instructed that if the agreement of September 21, 1936 between the union defendants and employers was made after or as a result of a controversy or dispute as to wages and conditions of employment and the union defendants demanded or wanted the provision thereof that no material should be purchased or work done ~~thereon~~ which had been manufactured or distributed under rates of wage and working conditions not conforming to such agreement, in order to establish a uniform condition of labor conditions, unionize other mills in the industry, gain jobs or better wages, or for any other legitimate purpose of a labor organization, you should acquit the union defendants for then neither the making of said agreement, nor any

renewal thereof, nor the carrying out of such an agreement by the means charged in the indictment, is unlawful on the part of the union defendants.

Clayton Act, Sec. 6-20 38 Stat. 730;

Norris-LaGuardia Act 47 Stat. 29;

Apex Hosiery v. Leader (1939) 310 U. S. 469;

U. S. v. Hutchison (1941) 312 U. S. 219.

Instruction No. 80

You are instructed that if the agreements between employers and employees, and any activities of the labor defendants [903] pursuant thereto arose from a labor dispute or labor disputes, then such agreements or activities on the part of the labor defendants are not unlawful as to such labor defendants, regardless of their intent and regardless of the intent of the defendant employers with whom they are charged with having conspired to violate the Serman Act, and if such agreements or activities are the result of labor disputes, then you are instructed to acquit the union defendants.

Clayton Act, Secs. 6-20 38 Stat. 730;

Norris-LaGuardia Act 47 Stat. 29;

U. S. v. Hutchison (1941) 312 U. S. 219.

Instruction No. 81

Even though labor agreements or activities intend to restrain or impede interstate shipments, or commerce in the sense that a person must be taken to intend the natural and probable consequence of his act, still such is not a violation of the Sherman Act if such is merely incidental to the enforcement of

union demands, for such is not the kind of restraint of trade or commerce which the Sherman Act condemns.

Restraints on the sale of the employee's services to the employer, however much they curtail the competition among employees, are not in themselves combinations or conspiracies in restraint of trade or commerce under the Sherman Act. The elimination of price competition based on differences in labor standards is the objective of any national labor union, for in order to render a labor organization effective it must eliminate the competition from non-union goods. You are therefore instructed that if you find that the labor defendants acted in their own self interest and to carry out their own objectives of labor such [904] as a better wage scale and conditions of employment and more jobs for the union members, they are not guilty of any violation of the Sherman Act.

Apex Hosiery v. Leader (1940) 310 U. S. 469.

Instruction No. 82

Either agreements or acts done in furtherance thereof by labor defendants for the purpose of furthering the unionization of other shops in the same industry in order to better the conditions and wages of the employees is a legitimate labor activity and does not violate the Sherman Act even though there is also present the motive of lessening interstate competition for union operators, which in turn lessens the pressure of the employer for reduction

of the union scale or resistance to an increase. To find any labor defendant guilty of violating the Sherman Act you must find beyond a reasonable doubt the existence of a primary intent to directly restrain interstate commerce. If the effect upon interstate commerce is merely incidental to an intent to improve working conditions, it is your duty to acquit the labor defendants.

United Mine Workers v. Penn Mining Co.
(1924) 300 Fed. 965 (2nd Cir.) cer. denied
265 U. S. 630.

Instruction No. 83

The making of the agreement of September 21, 1936 by the defendant unions was not a violation of the Sherman Act.

Instruction No. 84

The execution of the agreement of September 21, 1936 would not warrant a conviction under this indictment because it does not constitute the conspiracy described therein. [905]

Instruction No. 85

The union defendants had the lawful right to take the position as set forth in the agreement of September 21, 1936 that members of their unions would do no work upon any material or article that has had any operation performed on same by saw mills, mills or cabinet shops or their distributors that did not conform to the rates of wage and working conditions prescribed by the agreement of September 21, 1936, and such acts on the part of the

unions and their members do not constitute a violation of the Sherman Act.

Instruction No. 86

Workmen are under no legal obligation to work on any kind of material. If the defendant unions and their members deemed it to their interest to refuse to work on material not manufactured in conformity with the rates of wage and working conditions prescribed by the agreement of September 21, 1936, they had a legal right so to do and the mere fact that such material may have been made in some state other than California does not render such refusal unlawful or in violation of the Sherman Act.

Instruction No. 87

In order to find any labor defendant or organization guilty in this case, you must find that he or it was not acting with the intent of furthering the legitimate objectives of labor relating to the improvement of conditions of employment, but on the contrary with the specific and sole intent of being a tool or instrument of the employers to suppress competition or fix prices.

Apex Hosiery v. Leader (1940), 310 U. S. 469. [906]

Instruction No. 88

You are further instructed as to both union organizations and individual defendants affiliated with such union organizations that since the acts charged here against said defendants are relevant

to labor conditions and legitimate objectives of labor, in order to find any of such defendants guilty you must find beyond a reasonable doubt that he or it either participated in, actually authorized or ratified such an act, not with the intent of carrying out legitimate objectives of labor but in combination or conspiracy with the employers with the unlawful intent of restraining interstate commerce by restraining or eliminating the competition from out of the state material.

You are further instructed that since the acts attributed to the labor defendants are lawful, unless participated in, expressly authorized or ratified with such unlawful intent, the fact that such activities in fact result in a restraint upon interstate commerce does not give rise to the presumption of an unlawful intent, since if two legal presumptions may reasonably arise from the evidence, the law will presume a legal rather than an illegal intent.

Morris-LaGuardia Act. Stat. 71

Dickerson v. U. S. 18 F. 2d 887 (8 Cir—1927)

Instruction No. 89

The negotiating, making or carrying out by the union defendants of the agreement of September 21, 1936 and the provisions thereof that no work would be done on any material or article having an operation performed on it by mills, saw mills, cabinet shops, or their distributors that do not conform to the rates of wage and working conditions of such agreement, or the negotiating, making or carrying

out of any subsequent agreement or understanding continuing such provision of the agreement of [907] September 21, 1936, in effect is lawful and not a violation of the Sherman Act on the part of said union defendants, unless you find that such agreement was not made to carry out the interests and labor objectives of the unions but solely with intent to conspire and combine with the employer defendants to make the unions the instrument of the employer to restrain interstate commerce to eliminate competition from millwork and patterned lumber in interstate commerce.

Apex Hosiery v. Leader (1939) 310 U. S. 469;
U. S. v. Hutchison (1941) 312 U. S. 219.

Instruction No. 90

You are instructed that the negotiation and making of such an agreement as the contract of September 21st, 1936 covering wage scale and working conditions is within the legitimate objective of a labor union. You are further instructed that the elimination of price competition based upon differences in labor standards is the objective of any national labor union and with the object of promoting this interest, or any other legitimate object of labor such as the unionization of other mills in the industry, defendant labor unions had the right to agree that no material should be purchased from, or work done on any material or article that had any operation performed on same by saw mills, mills, or cabinet shops, or their distributors not

conforming to the rates of wage and working conditions of such agreement. You are further instructed that the labor defendants had the right to carry out and enforce the carrying out of such agreement in their own interest by peaceful and lawful means such as picketing and threatening to picket; strikes or threats to strike and advertising by other peaceful means the existence of material manufactured or handled under different conditions and standards and considered [908] unfair to defendant unions.

Apex Hosiery v. Leader (1939) 310 U. S. 469;
U. S. v. Hutehison (1941) 312 U. S. 219.

Instruction No. 91

You are instructed that the agreement of September 26th, 1936 on its face relates to wages and conditions of employment for the union defendants and the provision thereof to the effect that no material should be purchased or worked upon that had previously had an operation performed thereon by saw mills, mills, cabinet shops, or their distributors that do not conform to the rates of wage and working conditions of such agreement, was a lawful provision for the unions to agree upon. You are further instructed that the carrying out of such agreement by the peaceful means as charged in the indictment was likewise lawful on the part of the union defendants and you are instructed to acquit the union defendants unless you find that in the making and carrying out of such agreement the

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unions were not acting in their own self interest and to carry out their own labor objectives.

U. S. v. B. Goedde and Co. (D. C. E. D. Ill.
Criminal No. 15253—Judge Lindley—Sept.
5, 1941—not yet reported) 46 Fed. Supp. 523;
U. S. v. Hutchison, 312 U. S. 219.

Admission of Service on the back of Instruction
No. 91:

Receipts of a copy of the within Instructions is
hereby admitted this 21st day of November, 1941.

CHAS. S. BURDELL,

Attorneys for U. S. of
America.

[Endorsed]: Filed Dec. 12, 1941. [909]

[Title of District Court and Cause.]

ADDITIONAL REQUESTS FOR INSTRUCTIONS BY ALL UNION DEFENDANTS.

The union defendants herein hereby present the following additional instructions for the jury and request the Court to give such instructions, and each of them, and each part of each of them, to the jury upon the submission of the case and said defendants hereby so move the Court.

Dated this 10th day of December, 1941. [910]

(Signed by Attorneys for Union Defendants.)

Receipt of copy of Additional Requests for In-

structions by all Union Defendants admitted this 10th day of December, 1941.

FRANK J. HENNESSY

TOM C. CLARK

Attorneys for United States
of America.

Instruction No. 92

You are instructed that the agreement dated September 21, 1936 was legal on its face.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes
730. [911]

Instruction No. 93

You are instructed that the agreement of 1938 was legal on its face.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes 730.

Instruction No. 94

You are instructed that the agreement of 1938 as amended or modified under date of October 18, 1938 was legal on its face.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes 730.

Instruction No. 95

You are instructed that the agreements effective May 1st, 1939 to May 1, 1940 were legal on their face.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes 730.

Instruction No. 96

You are instructed that the clause in such contracts that "Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission or the Sherman Anti-Trust Law" was a lawful provision in such contracts and that any defendant who relied thereon as exempting from the operation of the preceding clauses inter-state commerce should be acquitted for reliance on such clause would be inconsistent with an intent to conspire [912] against inter-state commerce.

Instruction No. 97

You are instructed that the union defendants have the right to decline to work or agree not to work upon products made by a CIO or a company union in carrying out their own labor objectives.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes 730.

Instruction No. 98

You are further instructed that in the exercise of the right of the union defendants to refuse to handle or work on such products considered unfair, the union defendants had the right to picket freight cars containing such material and to advertise to the world the fact that such material was "hot" or unfair.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes 730.

Instruction No. 99

You are further instructed that where such unfair or "hot" material was found mingled in a shipment with fair or labeled lumber which could not be reached without first removing the unfair lumber, or was so mingled as to attempt a fraud on the aforesaid policy of the union not to handle or work upon such unfair material, then the unions and any individuals affiliated with such unions had the right to refuse to touch or work on the cargo as a whole.

Norris-LaGuardia Act, Statutes, 29;

Clayton Act, Section 6-20, 38 Statutes
730. [913]

Instruction No. 100

You are instructed that by the indictment in this case it is charged that defendant unions were not attempting to enforce or protect the right to bargain collectively nor acting in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the alleged combination and conspiracy was alleged to be directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area, and you are instructed that the burden is upon the prosecution to establish to your satisfaction beyond a reasonable doubt and to a moral certainty that such charges are true, or you should acquit the union organizations and each individual union defendant.

Indictment, Par. 29, page 22.

Instruction No. 101

You are instructed that in determining the intent with which any union defendant acted it is the policy of the City and County of San Francisco in the letting of contracts for public works and the purchase of public supplies to favor local industry by a price differential and to also favor the employment of local labor.

Sect. 123, Part 1 of the Municipal Code of the City and County of San Francisco

Sect. 98, Charter of the City and County of San Francisco, as amended 1935.

Instruction No. 102

You are further instructed that activities to obtain the benefit of such local laws and in furtherance of such public policy favoring local products in public contracts or the advocacy of the use of local products as opposed to outside products by [914] peaceful, conventional means do not violate the Sherman Act. Such activities are entirely legal so long as illegal means of coercing the exercise of free will are not employed.

McKay v. Retail Auto Salesmen, 16 Cal. 2d 311.

Instruction No. 103

You are instructed that the advocacy of the use of local products as opposed to outside products by peaceful, conventional means does not violate the Sherman Act. Such activity is entirely legal so long as illegal means of coercing the exercise of free will are not employed.

McKay v. Retail Auto Salesmen, 16 Cal. 2d 311.

Instruction No. 105

You are instructed that as to every individual defendant affiliated with the labor unions you should return a verdict of acquittal unless you find that he was not acting in furtherance of the legitimate objects of his labor union, but on the contrary was acting in combination with the employer defendants with the intent to restrain interstate commerce in millwork and patterned lumber.

Clayton Act, Sec. 6-20, 38 Stat. 730;

Norris-LaGuardia Act, 47 Stat. 29.

[Endorsed]: Filed Dec. 12, 1941. [915]

**INSTRUCTIONS REQUESTED BY DEFENDANT
ALAMEDA COUNTY BUILDING AND
CONSTRUCTION TRADES COUNCIL**

Comes now defendant Alameda County Building and Construction Trades Council, and hereby joins in the instructions requested by other union defendants herein, that is to say, the instructions requested by the defendant Bay Counties District Council of Carpenters and others, represented by Hugh K. McKevitt, Esq., and others; also the instructions requested by defendant United Brotherhood of Carpenters and Joiners of America, represented by Charles H. Tuttle, Esq.; in addition to such instructions so requested by this defendant in conjunction with such other union defendants, this defendant presents the following proposed instruc-

tions for the jury and hereby requests the Court to give such instructions and each of them and each part of them to the jury upon the submission of the case, and said defendant hereby further moves the Court requesting the privilege to propose additional requests for instructions on questions arising during the trial.

Dated: This 12th day of November, 1941.

Attorney for said Defendant

Filed: Dec. 12, 1941

WALTER B. MALING,
Clerk. [916]

Instruction No. 1

You are instructed that the evidence in this case is insufficient to warrant a conviction of the defendant Alameda County Building and Construction Trades Council upon the charge contained in Count One in the indictment herein, and the Court therefore instructs you to render a verdict of not guilty as to the said defendant Alameda County Building and Construction Trades Council upon the charge contained in said count one in said indictment.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Instruction No. 2

I instruct you that the publication, unaccompanied by violence, of a notice that the employer is unfair to organized labor and requesting the public

not to patronize him is an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress.
Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

U. S. v. Hutcheson, 61 S. Ct. 463, 85 L. Ed. 412

Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 659. [917]

Instruction No. 3

I instruct you that under the Constitution of the United States and under the Constitution of the State of California, all citizens are guaranteed the right of free speech. I further instruct you that if you find that the defendants or some of them participated in picketing certain places of business, and that such picketing was carried on by peaceful means, then I instruct you that such picketing was an exercise of the right of free speech by those defendants who participated in the picketing.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

In re Lyons, 27 Cal. App. (2d) 293, 295, 299.

Thornhill v. Alabama, 60 S. Ct. 736, 310 U. S. 88, 84 L. Ed. 659.

People v. Carlson, 60 S. Ct. 746, 310 U. S. 106, 84 L. Ed. 668.

Lisse v. Local Union, 2 Cal. (2d) 312.

McKay & Allied cases, 16 Cal. (2d) 311, et seq. [918]

Instruction No. 4

I instruct you that under the law in California, picketing carried on for the purpose of seeing who can be the subject of persuasive inducement is legal. Therefore, I instruct you that if you find that the picketing in this case was conducted for the purpose of peaceful persuasion, then I instruct you that such picketing is legal.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

Lisse v. Local Union, 2 Cal. (2d) 312.

McKay & Allied Cases, 16 Cal. (2d) 311, et seq.

Instruction No. 5

Under the laws of the State of California, picketing may lawfully be carried on by any group of citizens, and so long as peaceful means are used in connection with the picketing, such picketing is a mere exercise of the right of free speech which is guaranteed to every citizen by the Constitution of the United States and by the Constitution of the State of California.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

In re Lyons, 27 Cal. App. (2d) 293, 295, 299.

People v. Carlson, 60 S. Ct. 746, 310 U. S. 106,
84 L. Ed. 668.

Thornhill v. Alabama, 60 S. Ct. 736, 310 U. S.
88, 84 L. Ed. 659.

Lisse v. Local Union, 2 Cal. (2d) 312.

McKay & Allied Cases, 16 Cal. (2d) 311, et
seq. [919]

Instruction No. 6

I instruct you that under the laws of California, picketing is lawful if carried on by peaceable and persuasive means. If you find that the picketing in this case was carried on for the purpose of actually interfering with the peaceable entrance to a place of business, or peaceable exit therefrom, then such picketing was unlawful, but if you find that such picketing was carried on for the purpose of influencing or persuading members of the public by peaceful means, then I instruct you that such picketing was lawful.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

Lisse v. Local Union, 2 Cal. (2d) 312, 321.

McKay & Allied Cases, 16 Cal. (2d) 311, et
seq. [920]

Instruction No. 7

I instruct you that these defendants had a legal right, under the laws of the State of California, to

withdraw social and business intercourse with any person or persons, and that they also had the right by all legitimate means, that is to say, by fair publication and fair oral or written persuasion to induce others interested in or sympathetic with their cause to withdraw their social intercourse and business patronage from any such persons or persons.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

Pierce v. Stablemen's Union, 156 Cal. 70.

Parkinson v. Building Trades Council, 154 Cal. 581.

Senn v. Tile Layers Union, 57 S. Ct. 857, 201 U. S. 468, 81 L. Ed. 1229. [921]

Instruction No. 8

You have heard the witnesses and the attorneys in this case refer to a boycott carried on by the defendants or some of them against certain places of business. The Supreme Court of California has defined a boycott as being an organized effort to persuade or coerce, which may be legal or illegal according to the means employed. In other words, and as applied to the facts in this case, the defendants had a legal right to conduct an organized boycott of certain places of business, and in pursuance of the boycott, to endeavor to persuade the public not to patronize the places of business under boycott, provided no illegal means were used in the carrying out of the boycott. Therefore, I instruct you that if you find that the defendants did carry

on an organized boycott of such places of business, but that in doing so, they neither committed nor threatened any act of violence, then I instruct you that the boycott was legal.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

Lisse v. Local Union, 2 Cal. (2d) 312, 321.

Pierce v. Stablemen's Union, 156 Cal. 70, 75, 76.

McKay & Allied Cases, 16 Cal. (2d) 311, et seq. [922]

Instruction No. 9

I instruct you that if you find that the acts committed by the defendants, as shown by the evidence, were in themselves legal, and not wrong, I advise you that those acts are not rendered illegal merely by reason of any bad motive or bad or malicious intent with which such acts were done.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

Parkinson v. Building Trades Council, 154 Cal. 581, 593-597.

Instruction No. 10

The proof required to show ratification by defendant Alameda County Building & Construction Trades Council after actual knowledge of unlawful acts of its individual officers, members or agents is

proof of formal action taken by vote or resolution of the members comprising said Alameda County Building & Construction Trades Council.

Given.

Refused. Exception allowed. ✓

Given as modified. Exception allowed.

Authorities:

Federal Anti-Injunction Act (Norris-LaGuardia Act) 29 U. S. Code, Section 106. [923]

Instruction No. 11

The proof required to show actual participation by defendant Alameda County Building & Construction Trades Council in unlawful acts of its individual officers, members or agents is proof of formal action taken by vote or resolution of the members comprising said Alameda County Building & Construction Trades Council.

Authorities:

Federal Anti-Injunction Act (Norris-LaGuardia Act) 29 U. S. Code, Section 106.

Instruction No. 12

The proof required to show actual authorization by defendant Alameda Building & Construction Trades Council of unlawful acts of its individual officers, members or agents is proof of formal action taken by vote or resolution of the members comprising said Alameda Building & Construction Trades Council.

Authorities:

Federal Anti-Injunction Act (Norris-LaGuardia Act) 29 U. S. Code, Section 106.

Instruction No. 13

Defendant Alameda County Building & Construction Trades Council shall not be held responsible or liable for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in or actual authorization of such acts or of ratifications of such acts after actual knowledge thereof.

Authorities:

Federal Anti-Injunction Act (Norris-LaGuardia Act) 29 U. S. Code, Section 106.

[Endorsed]: Filed Dec. 12, 1941. [924]

[Title of District Court and Cause.]

**DEFENDANTS' REQUEST FOR
INSTRUCTIONS**

Defendants, Mullen Manufacturing Co., Joseph J. Schmidt, Fink & Schindler Co., George Randolph, Herman Sichel, L. & E. Emanuel, Inc., Leo Roselyn, Henry A. Schulte, Oscar H. Ostlund, Braas & Kuhn Co., John Mullen, J. G. Ennes, Charles F. Stauffacher, Joseph L. Emanuel, Richard Kuhn, Commercial Fixture & Store Front Institute, respectfully request the above entitled Court to give the within Instructions.

Dated: November 10th, 1941.

**HAROLD C. FAULKNER
CHARLES ALBERT ADAMS
MELBERT B. ADAMS**

Attorneys for Certain Defendants.

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Instruction No. 27

The testimony of an accomplice is not to be judged by the same standard as the testimony of any other witness, but such evidence is to be acted upon with great caution, and is [925] subject to grave suspicion.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....

Judge.

People v. Dail, 43 A. C. A. 912.

Instruction No. 28

I charge you that if any witness, who is an accomplice within the meaning of that term as I have defined it to you, has appeared in this case and testified on behalf of the Government, then I charge you that you should view the testimony of such witness with distrust and caution.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....

Judge.

Instruction No. 30

An accomplice is one who is liable to prosecution for the identical offense charged against the defendants on trial in the cause in which the testimony of the accomplice is given. I further charge you that it is for you to determine, as a question of fact in

this case, whether or not a particular witness is an accomplice, as I have heretofore defined that term to you. If you do find that a witness who has testified in this cause is an accomplice, then I instruct you that the testimony of such an accomplice ought to be viewed with distrust. [926]

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....
Judge.

Instruction No. 52

I charge you that there are certain types of crime which are complete when the person intentionally does the acts denounced by the law. There is another class of crime which requires not only the deliberate act but a further aggravation of that act, to-wit: specific intent. The first intent, that is, general intent, is merely to do the act; the second class is to do the act and aggravate it by specific intent that this act may bring about a certain result. In the instant case, the indictment charges the defendants with conspiring and agreeing together for the purpose of unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber as defined in the indictment. Under this charge it is, therefore, necessary for the jury to find that each defendant joined a conspiracy with specific intent of unduly, unreasonably and directly restraining interstate

trade and commerce in millwork and patterned lumber as defined in the indictment.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....
Judge.

Instruction No. 61

You are instructed that under the National Labor Relations Act employers may be compelled to negotiate and bargain [927] collectively, with the representatives of their employees.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....
Judge.

Title 29, U. S. C. A., Sec. 160.

Instruction No. 62

You are instructed that the public policy of the United States guarantees full freedom to labor to organize for the purpose of negotiating the terms and conditions of employment and in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

It is the public policy of the United States to encourage industrial peace by the execution of collective bargaining agreements between labor and employer.

You are instructed, therefore, to draw no inference of guilt or wrongdoing merely because of the

execution between defendants of an agreement respecting wages, hours and working conditions.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....
Judge.

T. 29 U. S. C. A., Sec. 102,

T. 29 U. S. C. A., Sec. 151

(Norris-LaGuardia Act)

Instruction No. 63

You are instructed that employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. [928]

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....
Judge.

Title 29, U. S. C. A., Sec. 157.

Instruction No. 65

You are instructed that under the National Labor Relations Act it would be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees.

Given.

Refused. Exception-allowed.

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Given as modified. Exception allowed.

.....
Judge.

Title 29, U. S. C. A., Sec. 158.

Instruction No. 66

You are instructed that if the agreement of September 21, 1936 was the result of a labor dispute between defendant unions and defendant Commercial Fixture & Store Front Institute group, and that said contract was one providing only for wages, hours and working conditions, then said contract would not be a violation of the Sherman Anti-Trust Act.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....
Judge.

United States v. Hutcheson, 61 S. Ct. 464.

Instruction No. 68

You are instructed that even if you find that defendant [929] manufacturers entered into an agreement with defendant unions to purchase only mill-work and patterned lumber manufactured under certain specified conditions, or to buy them only from union shops, if such agreement was one of the terms or conditions of employment arising out of a labor dispute between them, such agreement would not be a violation of the Sherman Anti-Trust Law.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....
Judge.

Hinton v. Columbia River Packer's Ass'n. 117

Fed (2) 310, (9th Circuit).

United States v. Hutcheson, 61 S. Ct. 463, 29

U. S. C. A., Section 52.

Instruction No. 69

You are instructed that if you find that defendant manufacturers purchased only millwork and patterned lumber manufactured under certain specified conditions, or only from manufacturers located in the San Francisco Bay Area, pursuant to an agreement with defendant unions concerning terms or conditions of employment arising out of a labor dispute, then the defendants would, upon such facts, be not guilty of a violation of the Sherman Act.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....
Judge.

Hinton v. Columbia River Packer's Ass'n.,

117 Fed. (2) 310 (9th Circuit)

United States v. Hutcheson, 61 S. Ct. 463

29 U. S. C. A., Sec. 52. [930]

Instruction No. 70

A labor dispute may be defined as a controversy concerning terms or conditions of employment.

A controversy by defendant manufacturers with defendant unions concerning whether defendant manufacturers should purchase millwork and patterned lumber manufactured under certain specified conditions would be a controversy concerning terms of employment, and therefore, a labor dispute.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....
Judge.

Hinton v. Columbia River Packer's Ass'n.,
117 Fed. (2) 310 (9th Circuit)

Instruction No. 71

You are instructed that a contract concerning terms or conditions of employment between organizations of employers and organizations of employees, arising or growing out of a labor dispute, is not a violation of the Sherman Anti-Trust Act.

A provision in a contract, arising out of a labor dispute, requiring defendants to purchase only material that was produced under certain specified conditions would be one concerning terms or conditions of employment.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....
Judge.

Hinton v. Columbia River Packer's Ass'n.,
117 Fed. (2) 210, (9th Circuit)

United States v. Hatcheson, 61 S. Ct. 463

29 U. S. C. A. Sec. 52

[Endorsed]: Filed Dec. 12, 1941. [931]

[Title of District Court and Cause.]

MOTIONS FOR NEW TRIAL

Now come the defendants The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil Ovenberg, Dave Ryan, Charles Roe and W. L. Wilcox and severally and separately move the Court for an order granting [932] a new trial herein on the following grounds, and each of them:

1. That the verdict is contrary to law:
2. That the Court erred in the decision of questions of law arising during the course of the trial and which rulings were duly excepted to by defendants.
3. That the Court erred in denying the motions of each of these defendants to dismiss based upon the insufficiency of the indictment to state an of-

fense, which rulings were duly excepted to by defendants.

4. That the Court erred in numerous rulings upon the admissibility of evidence which were highly prejudicial to each defendant and excepted to by defendants, all as appears in the official stenographic reporter's transcript of the proceedings had and taken at the trial.

5. That the Court erred in denying the motions of each of these defendants to dismiss or for a directed verdict of acquittal upon the grounds of the insufficiency of the evidence to sustain a verdict of conviction, which rulings were duly excepted to by defendants.

6. That there is a fatal variance between the charge of the indictment and the proof in this—that the indictment alleges that defendant manufacturers agreed to accede and did accede to wage scale demands of defendant unions, in return for which defendant unions agreed to engage and have engaged in activities to restrain the sale and shipment of millwork and patterned lumber in interstate commerce and that in so agreeing and engaging defendant unions were not acting to enforce or protect the right to bargain collectively nor in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, whereas the proof is to the contrary and diametrically opposed to such allegations of the indictment. [933]

7. That the Court misdirected the jury in mat-

ters of law and in instructing and refusals to instruct the jury, and such errors and rulings were highly prejudicial to each defendant and duly excepted to by defendants, all as appears in the official stenographic reporter's transcript of the proceedings had and taken at the trial and of the charge given by the Court and the proposed instructions submitted and filed by defendants and which are of record in the action.

8. That the verdict is contrary to the evidence.

9. That there is no evidence to sustain the verdict.

10. That there is insufficient evidence to sustain the verdict.

11. That the evidence in the case is as consistent with innocence as with guilt.

12. That counsel prosecuting the case were guilty of prejudicial misconduct during the trial and before the jury in comments relative to defendants who had made a plea of nolo contendere and by reference to such as pleas of guilt that the Court erred in its rulings and statements concerning such pleas over the objections of defendants and to which they reserved exceptions.

13. That the jury was guilty of misconduct by which a fair, due and impartial consideration of the case has been prevented.

14. That the verdict was decided by means other than a fair expression of opinion on the part of all the jurors.

15. Newly discovered evidence, material to de-

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fendants, which could not, with reasonable diligence have been discovered and produced at the trial.

Said motions will be based upon this moving paper together with points and authorities filed herewith, all records and files in the action and the minutes of the Court and the official stenographic reporter's transcript of the proceedings had and [934] taken at the trial and upon such affidavits or other evidence as may be filed and adduced at the hearing of the motions.

Dated: December 15, 1941.

JOSEPH O. CARSON

JOSEPH O. CARSON, II.

CHARLES H. TUTTLE

THOMAS E. KERWIN

HARRY N. ROUTZOHN

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for Moving Defendants.

Receipt of a copy of the within Motions for New Trial is hereby admitted this 15th day of December, 1941.

WALLACE HOWLAND

TOM. C. CLARK

Attorneys for Plaintiff, U. S. of America

[Endorsed]: Filed Dec. 15, 1941. [935]

[Title of District Court and Cause.]

MOTIONS IN ARREST OF JUDGMENT

Now come the defendants The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil Ovenberg, Dave Ryan, Charles Roe and W. L. Wilcox and severally and separately move the Court in arrest of judgment and for an order that no judgment be rendered on the verdict of guilty herein as to each of said defendants, upon the following grounds, and for the following reasons, and each of them:

1. That as to the defendant The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, and individual defendant members thereof, an immunity from prosecution in the case arose and continues to exist because of the compulsory production of their private books, papers and records before the Grand Jury, all as appears in their plea in abatement on file herein.

2. That as to the defendant The United Brotherhood of Carpenters and Joiners of America, Millmen's Union, No. 550; and individual defendant

members thereof, an immunity from prosecution in the case arose and continues to exist because of [936] the compulsory production of their private books, papers and records before the Grand Jury, all as appears in their plea in abatement on file herein.

3. That as to the defendant The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and individual members thereof, an immunity from prosecution in the case arose and continues to exist because of the compulsory production of their private books, papers and records before the Grand Jury, all as appears in their plea in abatement on file herein.

4. That as to the defendants The United Brotherhood of Carpenters and Joiners of America; Bay District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42 and United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, and as to the individual moving union defendants, each of whom is a member of one or more of such union organizations, an immunity from prosecution in the case arose and continues to exist by reason of the compulsory production of the private papers, books and records of such union organizations at the trial, and the introduction thereof in evidence over the objections of said defendants as stated

and made in the trial, and to the overruling of which objections exceptions were reserved, all as appears from the official stenographic reporter's transcript of the proceedings had and taken at the trial.

5. Additionally as to the defendant Dave Ryan, that he has at all times been immune from prosecution in the case by reason of having been compelled to appear and testify against himself before the Grand Jury over his objections and after a claim of immunity, all as appears in his plea of abatement filed herein, and such defendant continues to assert and claim [937] his immunity herein under the Fourth and Fifth Amendments to the Constitution of the United States and under the Sherman Anti-Trust law; United States Statutes of 1903, Chapter 755, Subdivision 1, 32 Stat. 904, and as otherwise provided by law.

6. Additionally as to the defendant Charles Helbing, that he has at all times been immune from prosecution in the case by reason of having been compelled to appear and testify against himself before the Grand Jury over his objections and after a claim of immunity, all as appears in his plea of abatement filed herein, and such defendant continues to assert and claim his immunity herein under the Fourth and Fifth Amendments to the Constitution of the United States and under the Sherman Anti-Trust law, United States Statutes of 1903, Chapter 755, Subdivision 1, 32 Stat. 904, and as otherwise provided by law.

7. Additionally as to the defendant Walter O'Leary that he has at all times been immune from prosecution in the case by reason of having been compelled to appear and testify against himself before the Grand Jury over his objections and after a claim of immunity, all as appears in his plea of abatement filed herein, and such defendant continues to assert and claim his immunity herein under the Fourth and Fifth Amendments to the Constitution of the United States and under the Sherman Anti-Trust law, United States Statutes of 1903, Chapter 755, Subdivision 1, 32 Stat. 904, and as otherwise provided by law.

8. That the facts stated in the indictment do not constitute a public offense.

9. That the facts alleged in the indictment fail to state a violation of the Sherman Anti-Trust Law:

10. That the indictment is defective in the particulars specified in the demurrers of these defendants.

11. That the indictment on its face contains matters constituting legal justification for all acts charged against these defendants. [938]

Said motions will be based upon this moving paper, together with points and authorities served and filed herewith, and upon all records and files of the Court affecting the case, and upon the minutes of the Court and the official stenographic reporter's transcript of the proceedings had and

taken at the trial, and upon such evidence as may be adduced at the hearing of the motions.

Dated: December 15th, 1941.

JOSEPH O. CARSON

JOSEPH O. CARSON, II.

CHARLES H. TUTTLE

THOMAS E. KERWIN

HARRY N. ROUTZOHN

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for Moving Defendants.

Receipt of a copy of the within Motions in Arrest of Judgment is hereby admitted this 15th day of December, 1941.

WALLACE HOWLAND

TOM C. CLARK

Attorneys for Plaintiff, U. S. of America.

Thereupon, the following proceedings were taken upon December 20, 1941:

"Mr. Howard: There are two motions pending, your Honor.

"The Court: Very well. I will hear the motions.

"Mr. Howard: In arrest of judgment—

"The Court: I will hear them.

"Mr. Howard: If the Court please, there are written motions on file, first, for a new trial, and, separately, in arrest of judgment. We at this time move the Court on the grounds stated in our writ-

ten motions—I understand this morning was fixed to hear those motions.

“The Court: Yes.

“Mr. Howard: I presume it is not necessary to read you the motions. [939]

“The Court: No.

“Mr. Howard: They will be considered made on the grounds stated in our written motions?

“The Court: Yes.

“Mr. Howard: We have filed points and authorities accompanying those motions. With reference to the Motion for New Trial, I think it can be accurately stated that the crux of the motion, the principal question presented by that motion relates to your Honor’s charge to the jury, and the rulings on the evidence, which in effect held in the case that in view of the fact there was a contract with non-labor groups that the Norris-LaGuardia Act and the Clayton Act were not applicable to the case. I believe that is a fair statement, in view of your Honor’s ruling, and we believe and respectfully urge that the cases are to the contrary, that those statutes have a clear application, certainly as to questions of fact involved for a jury, whereas your Honor’s rulings on admissibility of evidence and the charge to the jury were otherwise. Basically, I would say that is the position summarized with reference to the motion for new trial.

With reference to the motion in arrest of judgment, your Honor during the course of the trial, I believe, suggested that at this time you might

appropriately consider the question that related to those pleas in abatement. I refer generally to the pleas in abatement in behalf of all of the labor defendants which arise from the production of their books, records and papers, and, also, separately as to the defendants Ryan, O'Leary, and Helbing. Your Honor, I believe, has those pleas and the question involved in mind?

"The Court: Yes.

"Mr. Howard: We are urging in connection with our motion in arrest of judgment that as to those three defendants, and all of the defendants separately, that that motion should be arrested [940] on the grounds stated.

"The Court: I think this is the third time I am asked to pass on those pleas, is it not?

"Mr. Howard: I believe that is correct, your Honor.

"The Court: I did suggest that I thought the proper time to make such a plea was at this time.

"Mr. Howard: Yes, your Honor.

"The Court: When you made your motion in arrest of judgment. Therefore, I am not blaming you for urging it now. Is that all?

"Mr. Howard: Basically, that is all, yes.

"The Court: The motions are submitted and the motions are denied. Anything further?

"Mr. Howard: In order that the record be straight, as I understand it, your Honor, you in effect uphold your first ruling on the demurrers which were sustained to the pleas of abatement.

"The Court: Yes.

"Mr. Howard. May we note exceptions to the rulings this morning?

"The Court: Yes, you have an exception to this ruling. Each defendant has an exception to each ruling that I make."

"Mr. Howland: May I reply to one point, your Honor, in connection with the plea in abatement which Mr. Howard referred to, of the labor defendants? In view of the fact that the defendants, by the present motions which have just been denied, reassert their claim of immunity, and by reason of the fact I understand that your Honor has denied them, would it not be correct for your Honor's ruling to be a denial of those pleas rather than a reaffirmance of the demurrers?

"The Court: I have denied the pleas. I have denied the [941] motions. All of the motions made here this morning I have denied. The motion is denied as to each defendant.

"Mr. Howland: Well, I just understood from what your Honor said to Mr. Howard's closing remarks that your ruling as to the plea was in effect reaffirming your previous ruling on the demurrer to the plea.

"The Court: I denied the motion. I think the record is clear.

"Mr. Howard: If there is going to be any question we certainly want to clear it up here and now.

"The Court: Yes. Will there be any question?

"Mr. Howard: Your Honor, during the course

of the trial there was some suggestion that you read the Grand Jury transcript relating to the testimony of those witnesses. If that is to be considered in evidence it should become a part of the record and we would like the privilege also of offering any other proper showing.

"The Court: I don't think that that is necessary at all, Mr. Howard. However, if it would reassure you in any way about the matter I am quite willing to make findings upon the matter.

"Mr. Howard: Findings based on the evidence, your Honor?

"The Court: Well, that would be, I presume, the evidence I read on the motion you submitted; that is the evidence that you offered. I cannot specifically describe it to you now.

"Mr. Howard: If the Court please, if we understand that you are ruling on the question of fact as to immunity here, we would like the record to contain, first, the motion to quash those subpoenas duces tecum, and, second, your Honor's action with reference to the presentment of those witnesses on their claims of immunity, and, third, the Grand Jury proceedings, as a part of this record. Now, if your Honor's ruling is in effect that you are reaffirming the ruling— [942]

"The Court: I am not reaffirming anything. I am denying any motion that has been made here this morning in behalf of every defendant. I am not reaffirming anything. Now, you made your motions and your motions are denied, and you have an exception to the ruling of the Court.

"Mr. Howard: We would ask the privilege, your Honor, in connection with the motions of making a part of this record, then, the ruling which denied our motion to quash subpoenas duces tecum before this Court, and your Honor's ruling on the presentment of contumacious witnesses, being these three defendants, the individuals whom I have named, O'Leary, Ryan, and Helbing, and also the transcript of the Grand Jury showing the testimony that they gave.

"The Court: I have no objection to that.

"Mr. Howard: In other words, all of those things were offered as part of the record in this case, and they are received in evidence.

"The Court: Yes. No objection to that at all." [943]

[Title of District Court and Cause.]

DEMAND FOR BILL OF PARTICULARS

Come now the defendants, The United Brotherhood of Carpenters and Joiners of America, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, The United Brotherhood

of Carpenters and Joiners of America Millmen's Union No. 262, The Alameda County Building and Construction Trades Council, J. F. Cambiano, Dave Ryan, James Ricketts, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, H. Lidley, W. L. Wilcox, Walter O'Leary, M. D. Cicinato, J. P. [944] Sholden, C. H. Irish, George S. Smoot, Otto W. Sammet, and Emil H. Ovenberg, in the above entitled action, and each for itself or himself separately and severally moves the above entitled court for an order requiring and directing the United States Attorney in and for the Northern District of California, Southern Division, and the Special Assistants to the Attorney General of record in the above entitled proceeding, to furnish to each of said defendants a bill of particulars as to each and all of the following matters which do not and each of which does not clearly appear from the indictment herein, in order that each of said defendants may know and be particularly informed in order that they and each of them may prepare for trial, namely:

1. The names and addresses of manufacturers outside of California who have been prevented from shipping manufactured millwork or patterned lumber into the San Francisco Bay Area in interstate commerce by any activity of these defendants;

2. The names and addresses of all manufacturers outside of California desiring to ship manufactured millwork or patterned lumber who operate

entirely Union shops with a lower wage scale than such manufacturers in the San Francisco Bay Area;

3. What affairs, policies and acts of the defendant Unions, or any of them, constitute an offense against the laws of the United States, as alleged in paragraph 22, page 14, part IV of the indictment;

4. What acts constituting a public offense have been done by these defendants and by which defendant and the time and place of each act as charged in paragraph 22, page 14, part IV;

5. What, if any, substantive act has been done by these defendants, or any of them, which violates the Sherman Anti-Trust Act;

6. The time and place of any act and by whom committed which is alleged to constitute an offense, as charged in the [945] indictment;

7. What acts these defendants have authorized or ordered which constitute an offense against the laws of the United States, and the name of the defendant so authorizing or ordering such act;

8. A description of the rules, regulations and policies alleged to have been promulgated by defendant Unions and which constitute a public offense;

9. What relation the observance of the rules, regulations, policies and obligations of defendant

Unions has upon the alleged offenses sought to be charged in the indictment;

10. The time and place that each of these defendants entered the combination or conspiracy attempted to be alleged in the indictment;

11. The time and place of any act and the name of the defendant alleged to have committed it which has unduly or unreasonably or directly restrained interstate trade and commerce;

12. A Particular description of the divers means and methods alleged to have been used by these defendants, or any of them, in paragraph 28, page 18, part VI;

13. What activities defendant Unions agreed to engage in so as to prevent the sale and shipment of millwork and patterned lumber into the San Francisco Bay Area by manufacturers located outside of the State of California;

14. In what respect the agreement referred to in paragraph 27, sub-paragraph (b), page 19, part VI unreasonably affects interstate commerce or is unlawful;

15. What subsequent agreements and understandings have been made and the particulars thereof, as referred to in paragraph 28, sub-paragraph (c), page 19, part VI;

16. How and in what manner defendants prevented the sale and delivery of a carload of millwork and patterned lumber, [946] as alleged in paragraph 28, sub-paragraph (h), page 20, part VI;

17. As to any shipment prevented from being sold or delivered in the San Francisco Bay Area, a description of said shipment, the dates and the names of shippers;

18. The names of any purchasers of millwork or patterned lumber and who have been forced to cancel orders for manufacturers outside of the State of California by reason of anything done by these defendants;

19. The times and places where cars bearing millwork and patterned lumber were prevented from being unloaded by means of pickets or threats to picket, and the names of the manufacturers and consignees involved in such shipments;

20. The names of all manufacturers alleged to have been conspired against and prevented from engaging in interstate commerce;

21. What contracts were made which are referred to in paragraph 35, sub-paragraph (a), page 25, part IX;

22. The names of all persons, firms or corporations upon whom demands are alleged to have been made by defendant Unions that they purchase only from manufacturers acceptable to such Unions.

Said motion will be made upon the grounds that it is in the interest of justice that said particulars be supplied, and in order that these defendants may know the things with which they are charged so that they may prepare for trial, and will be made and based upon the indictment, upon the mat-

ters set forth in this demand and authorities served and filed herewith.

JOSEPH O. CARSON, JR.

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for said defendants.

[947]

[Title of District Court and Cause.]

**AFFIDAVIT OF CERTAIN DEFENDANTS IN
SUPPORT OF DEMAND AND MOTION
FOR BILL OF PARTICULARS.**

State of California,

City and County of San Francisco—ss.

J. F. Cambiano, individually and as a representative of the International Brotherhood of Carpenters and Joiners of America, an unincorporated association, Dave Ryan, individually and as secretary of Bay Counties District Council of Carpenters, James Rickets, Charles Roe, individually and as business representative of The Alameda County Building and Construction Trades Council, Charles Helbing, H. Lidley, W. P. Kelly, D. J. Edwards, individually and as vice-president of the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, an unincorporated association, W. L. Wilcox, M. D. Cicinato, J. P. Sholden, C. H. Irish, Walter O'Leary, individually and as business representative of The United Brother-

hood of Carpenters [948] and Joiners of America Millmen's Union No. 550, an unincorporated association, George S. Smoot, individually and as president of The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, an unincorporated association, Otto W. Sammet and Emil H. Ovenberg, being duly sworn, each for himself and not one for the other, says:

That these affiants who make this affidavit in behalf of themselves individually and also as officers or representatives of certain unincorporated associations, make this affidavit for and in behalf of themselves and for and in behalf of said unincorporated associations; that each affiant and each of said unincorporated associations is a defendant named in the indictment filed in the above entitled proceeding, and each is familiar with said indictment; that said indictment contains general allegations that these defendants have authorized or done acts constituting the alleged offense sought to be charged in said indictment, without specifying said acts, the time, place or nature thereof, which each defendant is charged to have authorized or done; that it appears from the face of said indictment that all of these defendants could not have done, authorized or performed all of the acts therein thus generally alleged against them all; that said indictment is so worded that it gives no information to affiants or any of them of the facts relied upon to show the complicity or relation of each affiant to the various acts or offenses sought to be

alleged in said indictment; that your affiants have been informed by their attorney, Hugh K. McKevitt, and believe the fact to be, and placing their allegations on such information and belief, allege that unless affiants are furnished with a bill of particulars, which particularly and specifically informs them and each of them concerning the matters set forth in their demand for bill of particulars, that they will be unable to prepare and present their defenses, and that in the event affiants [949] are tried on said indictment, they and each of them will be unable to claim prior jeopardy in the event that they or any of them are hereafter charged with any of the alleged offenses attempted to be set forth in said indictment.

J. F. CAMBIANO

DAVE RYAN

CHARLES HELBING

CHARLES ROE

H. LIDLEY

W. P. KELLY

J. P. SHOLDEN

D. J. EDWARDS

W. L. WILCOX

M. D. CICINATO

WALTER O'LEARY

EMIL H. OVENBERG

GEORGE S. SMOOT

OTTO W. SAMMET

C. H. IRISH

JAMES RICKETS

Subscribed and sworn to before me this 28th day of September, 1940.

[Seal] ANTONIO M. COGLIANDRO,
Notary Public, in and for the City and County of
San Francisco, State of California.

My Commission expires Dec. 31, 1942. [950]

On Wednesday, April 24, 1940, the following proceedings were had before Honorable A. F. St. Sure, Judge, in re presentment by the Grand Jury of David H. Ryan, Thomas H. Bennett and Alfred B. Fromm, for refusal to comply with subpoenas duces tecum.

Counsel appearing for the United States, Morris R. Clark, Esq., and Hugh B. Cox, Esq., Special Assistants to the Attorney General; for David H. Ryan, Thomas H. Bennett and Alfred B. Fromm, Joseph O. Carson, Jr., Esq., Hugh K. McKevitt, Esq., and Jack M. Howard, Esq.

The Grand Jury presented such witnesses, who were present in Court, as contumacious for having refused to produce the documents called for in subpoenas, and requested the order of the Court directing said witnesses to produce such documents.

Motions were then made in behalf of said witnesses, Local Union No. 42, United Brotherhood of Carpenters and Joiners of America, and Local Union No. 550, United Brotherhood of Carpenters and Joiners of America, to quash, vacate and sup-

press said subpoenas and said motions were heard by stipulation, and thereafter the moving papers on said motions filed in Proceeding No. 2727.

Thereupon, the matter was continued to Friday, April 26, 1940, and said witnesses directed to be present.

On Friday, April 26, 1940, said witnesses being present, the following proceedings were had and taken:

"The Court: In an investigation by the Grand Jury under the anti-trust laws subpoenas duces tecum, pursuant to court order, were directed to Local #550, United Brotherhood of Carpenters and Joiners of America; Local #42 of the same organization; and the Bay District Council of Carpenters. Thomas Bennett, Alfred Fromm, and D. H. Ryan, as officers of the respective organizations, appeared before the Grand Jury, and when requested to produce the records called for by the subpoenas, acting upon [951] advice of counsel, refused to produce the records unless granted immunity by the Government, which was refused. The Grand Jury made oral presentation to the court of the three witnesses as contumacious. Each being present in court with counsel, moved to quash, suppress, and vacate the subpoenas.

It is objected that as each subpoena affects a local union which is unincorporated and the things sought are the private papers of each individual member, no one of whom has any ownership distinct from the other, each is entitled to assert the

constitutional guarantees. Of course, each individual may assert and maintain any constitutional right to which he is entitled; but the act upon which this proceeding is based provides for criminal liability of, 'persons' restraining interstate commerce or creating a monopoly in restraint thereof. The act includes both corporations and associations 'existing under or authorized by the laws of either United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country. Title 15 USCA Sections 1, 2, and 7. There is ample authority supporting the procedure. *Wilson v. United States*, 221 U. S. 361; *United Mine Workers v. Coronado Co.*, 259 U. S. 344; *Brown v. United States*, 276 U. S. 134. Labor unions and their representatives are not exempt from the provisions of the anti-trust laws. Under the circumstances here shown it is clearly their duty to obey the subpoenas of the Grand Jury.

The objection that the subpoenas are too broad and indefinite is without merit. Examination shows them to be sufficiently specific and related to the matters under investigation.

The motions to quash, suppress, and vacate are denied, and the witnesses who are now present in court are hereby directed to appear before the Grand Jury and to produce and present the records called for by the subpoenas. [952]

"Mr. McKevitt: I am not sure whether under the rules we have exceptions saved. However, so there will be no doubt about that, may we be understood to save exceptions in all three matters?

"The Court: Yes.

"Mr. McKevitt: Furthermore, may it please the Court, I wish to note that the records required are supplied under the order of court, and under compulsion in all three matters.

"The Court: What is that?

"Mr. McKevitt: I would like it understood that we are supplying the records under the order of this Court and under compulsion in all three matters.

"The Court: Yes." [953]

In the District Court of the United States
for the Northern District of California

Southern Division

No. 2727

In the Matter of the Subpoena returnable before the Grand Jury Impanelled by the Honorable A. F. St. Sure, Judge of the above entitled Court, which Subpoena was issued out of and under the Seal of said Court on the 11th day of April, 1940, and directed to Bay Counties District Council of Carpenters, D. H. Ryan, Secretary, 200 Guerrero Street, San Francisco, California.

To the United States of America and Frank Hennessey, Esq., United States Attorney for the Northern District of California, and to Morris R. Clark, Esq., Special Assistant to the Attorney General of the United States:

**NOTICE OF MOTION AND MOTION TO
QUASH, VACATE, AND SUPPRESS SUB-
POENA.**

Notice is hereby given that D. H. Ryan, and Bay Counties District Council of Carpenters severally and jointly intend to and do hereby move the above entitled Court for an order with [954] respect to the above entitled subpoena, a copy of which subpoena is hereunto annexed as "Exhibit A", and by this reference and annexation made a part hereof, and a copy of which subpoena was delivered to D. H. Ryan on or about the 12th day of April, 1940, as follows:

1. Quashing, suppressing and vacating said subpoena in its entirety.

2. Quashing, suppressing and vacating the paragraphs of said subpoena, and each of them, which require the production of any books, documents or records purported to be described therein.

3. For such other additional or different relief as may be meet and proper in the premises.

Said motion will be and is hereby made upon the following grounds and each of them:

1. That said subpoena is so broad and indefinite in its terms as to be unreasonable, oppressive and invalid.

2. That the books, documents, records and things purportedly described in and called for by said subpoena constitute the private papers, property and effects of the individual members of the Bay Coun-

ties District Council of Carpenters and each of them, and are not subject to search and seizure.

3. That your moving parties and each of them, in behalf of themselves and of each individual member of Bay Counties District Council of Carpenters, assert and stand upon their constitutional rights not to be compelled to be witnesses against themselves in a criminal action or proceeding, and assert and claim immunity.

4. That said subpoena calls for the giving of testimony and evidence in addition to the production of things, and violates and is contrary to the provisions of the Fifth Amendment to the Constitution of the United States. [955]

5. That the requirements of the subpoena go further than the production of evidence in that the witnesses are commanded by its terms to testify and give evidence and establish the relationship of the books, records, and documents to the subjects enumerated.

6. That there is no showing of materiality or pertinence of the documents, records or things purportedly described nor any sufficient identification of such documents, records or things.

7. That the enforcement of the subpoena would constitute an unlawful search and seizure contrary to the Fourth Amendment to the Constitution of the United States.

The motion will be and is based on all records and files of the above entitled Court relating to the Grand Jury investigation and upon this notice

1236 *Lumber Products Assn., Inc., et al.*

of motion, together with the memorandum of points and authorities and the affidavit of D. H. Ryan filed herewith; and upon such additional evidence as may be adduced at the hearing of the motion.

Dated: April 24th, 1940.

JOSEPH O. CARSON, JR.

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for D. H. Ryan and
Bay Counties District Council
of Carpenters.

* * *

EXHIBIT "A"

District Court of the United States
Northern District of California
Southern Division

The President of the United States of America
To Bay Counties District Council of Carpen-
ters, D. H. Ryan, secretary, [956] (Mill-
men's Union) 200 Guerrero Street, San
Francisco, California. Greeting:

You and Each of You Are Hereby Commanded,
That all and singular business and excuses being
laid aside, you and each of you be and appear in
your proper person before the United States Dis-
trict Court for the Northern District of California,
at the Court Room, in the City and County of San
Francisco, on the 15th day of April, A. D. 1940, at
10 o'clock in the forenoon, to Testify the Truth, and

give evidence before the Grand Jury, and you are not to depart the Court without the leave of the Court or of the U. S. Attorney.

[Seal]

[Seal]

and bring with you and produce at the time and place aforesaid:

(1) Books or other documents or records showing the names of the officers, the directors, and the members of Bay Counties District Council of Carpenters during the period from January 1, 1937, to date.

(2) All minute books and other papers, records and documents containing the minutes or other records of proceedings including all motions offered and the action taken thereon at all meetings of (a) members, (b) directors, or (c) committees of Bay Counties District Council of Carpenters from January 1, 1937, to date.

(3) All original contracts or agreements proposed, executed, or in effect (or copies thereof where the originals are not in the possession of Bay Counties District Council of Carpenters) at any time during the period from January 1, 1937, to date and relating to

(a) the requirement that the union label of Local Unions No. 42 and No. 550 of the United Brotherhood of Carpenters and Joiners of America (sometimes known as the Millmen's

Union) be affixed to any millwork [957] sold or distributed in the San Francisco Bay Area;

(b) the prohibition and restriction of the distribution and sale in the San Francisco Bay Area of millwork transported into said area from states other than the State of California;

(c) the prohibition and restriction of the distribution and sale in the San Francisco Bay Area of the so-called readi-cut or prefabricated type of dwelling house transported into said area from states other than the State of California;

between Bay Counties District Council of Carpenters and (a) Local No. 42, United Brotherhood of Carpenters and Joiners of America, (b) Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, (c) Lumber Products Association, Inc., (d) Cabinet Manufacturers Institute of California, Inc., (e) Wood Products, Inc., and (f) Alameda County Building and Construction Trades Council.

(4) All original letters, telegrams, correspondence, reports, memoranda and other communications (or copies thereof where the originals are not in the possession of Bay Counties District Council of Carpenters) relating to the subjects and passing between the parties set forth in paragraph numbered (3) above during the period from January 1, 1937, to date.

(5) All general ledgers of Bay Counties District Council of [958] Carpenters from January 1, 1937, to date.

(6) All cash disbursement books of Bay Counties District Council of Carpenters from January 1, 1937, to date.

(7) All cash receipt books of Bay Counties District Council of Carpenters from January 1, 1937, to date.



(8) All check books and all cancelled checks of Bay Counties District Council of Carpenters from January 1, 1937, to date. And that you are not to omit, under pain of being adjudged guilty of contempt of said Court.

Witness, the Hon. A. F. St. Sure, Judge of the United States District Court for the Northern District of California, and the seal of the said Court, this 11th day of April, in the year of our Lord, one thousand nine hundred and forty and of the Independence of the United States of America the one hundred and sixty-fourth.

[Seal]

WALTER B. MALING,
Clerk.

By M. F. VAN BUREN,
Deputy Clerk. [959]



[Title of District Court and Cause.]

**AFFIDAVIT IN SUPPORT OF MOTION TO
QUASH, SUPPRESS AND VACATE SUB-
POENA DUCES TECUM.**

United States of America,
State of California,
City and County of San Francisco—ss.

D. H. Ryan, being first duly sworn, deposes and says:

That he is a citizen of the United States and is the duly qualified and acting Secretary-Treasurer of Bay Counties District Council of Carpenters; that said Bay Counties District Council of Carpenters is a voluntary association, unincorporated, consisting of various individual members, all of whom are individual workmen practicing the trade of carpenters and joiners, or paid officials or business agents of the various affiliated local unions, and none of whom is a corporation.

That on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to Bay Counties District Council of Carpenters, and D. H. Ryan, Secretary; that a copy thereof is annexed as an exhibit to the motion filed herewith and by this reference is made a part [960] hereof; that said subpoena was served upon your affiant, and pursuant to said subpoena your affiant appeared before the Grand Jury on April 24, 1940, to which time said proceeding had been continued.

That the books, papers, records and other documents purportedly described in said subpoena, and all things called for by said subpoena, are the papers, records and property of the individual members of said Bay Counties District Council of Carpenters; that the production of the things called for in said subpoena is tantamount to a general examination of the affairs of your affiant and those of his fellow members of said Bay Counties District Council of Carpenters, and requires evidence that said things relate to the subjects purportedly described in said subpoena; that the effect of said subpoena is to constitute a fishing expedition without specification of the evidence desired or any showing of its materiality or pertinency; that said subpoena purports to require the determination by the party subpoenaed of all matters "related to" the subjects therein purportedly described, and its enforcement would seriously impair the business activities and conduct of the affairs of said association; that your affiant, in behalf of himself and in behalf of said Bay Counties District Council of Carpenters, and each individual member thereof, desires to assert all existing constitutional guarantees and rights under Amendments 4 and 5 of the Constitution of the United States, including the rights of a person not to be compelled to be a witness against himself in a criminal proceeding and against self incrimination, and the rights to be secure against an unlawful search and seizure or

1242. *Lumber Products Assn., Inc., et al.*

unreasonable search and seizure of his person, property and effects.

D. H. RYAN

Subscribed and sworn to before me this 24th day of April, 1940.

[Seal]

ANTONIO M. COBLIANDRO

Notary Public in and for the City and County of San Francisco, State of California.

By Commission expires Dec. 31, 1942. [961].

In the District Court of the United States
for the Northern District of California

Southern Division

No. 2727

In the Matter of the Subpoenas returnable before the Grand Jury impanelled by the Honorable A. F. St. Sure, Judge of the above entitled Court, which Subpoenas were issued out of and under the Seal of said Court and directed to Local Union No. 550, United Brotherhood of Carpenters and Joiners of America.

NOTICE OF MOTION AND MOTION TO
QUASH, VACATE AND SUPPRESS SUB-
POENA.

To the United States of America and Frank Hennessey, Esq., United States Attorney for the Northern District of California, and to Morris R. Clark, Esq., Special Assistant to the Attorney General of the United States:

Notice Is Hereby Given that Local Union No. 550, United Brotherhood of Carpenters and Joiners of America and Thomas Bennett, severally and jointly intend to and do hereby move the above entitled Court for an order with respect to the above [962] entitled subpoenas, a copy of one of which subpoenas is hereunder annexed as "Exhibit A," and by this reference and annexation made a part hereof, and a copy of which subpoena was delivered to W. C. O'Leary on or about the 11th day of April, 1940, and an identical subpoena served upon Thomas Bennett on or about April 24, 1940, as follows:

1. Quashing, suppressing and vacating said subpoenas, and each of them, in their entirety.
2. Quashing, suppressing and vacating the paragraphs of said subpoenas, and each of them, which require the production of any books, documents or records purported to be described therein.
3. For such other additional or different relief as may be meet and proper in the premises.

Said motion will be and is hereby made upon the following grounds and each of them:

1. That said subpoenas are, and each is, so broad and indefinite in terms as to be unreasonable, oppressive and invalid.

2. That the books, documents, records and things purportedly described in and called for by said subpoenas constitute the private papers, property and effects of the individual members of Local Union No. 550, United Brotherhood of Carpenters

and Joiners of America, and each of them, and are not subject to search and seizure.

3. That your moving parties and each of them, in behalf of themselves and each individual member of Local Union No. 550, United Brotherhood of Carpenters and Joiners of America, assert and stand upon their constitutional rights not to be compelled to be witnesses against themselves in a criminal action or proceeding, and assert and claim immunity.

4. That said subpoenas, and each of them, call for the [963] giving of testimony and evidence in addition to the production of things, and violates and are, and each is, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

5. That the requirements of the subpoenas go further than the production of evidence in that the witnesses are commanded by their terms, and the terms of each, to testify and give evidence and establish the relationship of the books, records and documents to the subjects enumerated.

6. That there is no showing of materiality or pertinence of the documents, records or things purportedly described nor any sufficient identification of such documents, records or things.

7. That the enforcement of the subpoenas, or either of them, would constitute an unlawful search and seizure contrary to the Fourth Amendment to the Constitution of the United States.

The motion will be and is based on all records

and files of the above entitled court relating to the Grand Jury investigation and upon this notice of motion, together with the memorandum of points and authorities and the affidavit of Thomas Bennett filed herewith, and upon such additional evidence as may be adduced at the hearing of the motion.

Dated: April 24, 1940.

Exhibit "A" is identical in form with Exhibit "A" attached to Notice of Motion and Motion to Quash, Vacate and Suppress filed by W. C. O'Leary, which is hereinafter set forth and which is incorporated by this reference.

JOSEPH O. CARSON, JR.
HUGH K. McKEVITT
JACK M. HOWARD

Attorneys for Local Union
No. 550 United Brotherhood
of Carpenters and Joiners
of America and Thomas
Bennett.

[Endorsed]: Filed Apr. 24, 1940. [964]

[Title of District Court and Cause.]

**AFFIDAVIT IN SUPPORT OF MOTION TO
QUASH, SUPPRESS AND VACATE SUB-
POENAS DUCES TECUM.**

United States of America,
State of California,
City and County of San Francisco—ss.

Thomas Bennett, being first duly sworn, deposes and says:

That he is a citizen of the United States and is the duly qualified and acting Recording Secretary of Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America; that said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America is a voluntary association, unincorporated, consisting of various individual members, all of [965] whom are individual workmen practicing the trade of carpenters and joiners, and none of whom is a corporation.

That on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America; that a copy thereof is annexed as an exhibit to the motion filed herewith and by this reference is made a part hereof; that said subpoena was served upon W. C. O'Leary, business agent of said local union, and an identical subpoena as to form was served upon your affiant; that pursuant

to said subpoena, your affiant appeared before the Grand Jury on April 24, 1940, to which time said proceeding had been continued;

That the books, papers, records and other documents purportedly described in said subpoena, and all things called for by said subpoena, are the papers, records and property of the individual members of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America; that the production of the things called for in said subpoena is tantamount to a general examination of the affairs of your affiant and those of his fellow members of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, and requires evidence that said things relate to the subject purportedly described in said subpoena; that the effect of said subpoena is to constitute a fishing expedition without specification of the evidence desired or any showing of its materiality or pertinency; that said subpoena purports to require the determination by the party subpoenaed of all matters "related to" the subjects therein purportedly described, and its enforcement would seriously impair the business activities and conduct of the affairs of said association; that your affiant, in behalf of himself and in behalf of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, and each individual member thereof, [966] desires to assert all existing constitutional guarantees and rights under Amendments 4 and 5 of the Constitution of the

1248 *Lumber Products Assn., Inc., et al.*

United States, including the rights of a person not to be compelled to be a witness against himself in a criminal proceeding and against self incrimination, and the rights to be secure against an unlawful search and seizure or unreasonable search and seizure of his person, property and effects.

THOMAS BENNETT

Subscribed and sworn to before me this 24th day of April, 1940.

[Seal]

ANTONIO M. COGLIANDRO

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires Dec. 31, 1942.

[Endorsed]: Filed Apr. 24, 1940. [967]

In the District Court of the United States
For the Northern District of California
Southern Division.

No. 2727

In the Matter of the Subpoenas returnable before the Grand Jury impanelled by the Honorable A. F. St. Sure, Judge of the above entitled Court, which Subpoenas were issued out of and under the Seal of said Court and directed to Local Union No. 42, United Brotherhood of Carpenters and Joiners of America.

NOTICE OF MOTION AND MOTION TO
QUASH, VACATE AND SUPPRESS
SUBPOENA.

To the United States of America and Frank Hennessey, Esq., United States Attorney for the Northern District of California, and to Morris R. Clark, Esq., Special Assistant to the Attorney General of the United States;

Notice is hereby given that Local Union No. 42, United Brotherhood of Carpenters and Joiners of America, and Alfred Fromm, severally and jointly intend to and do hereby move the above entitled Court for an order with respect to the above subpoenas, a [968] copy of one of which subpoenas is hereunder annexed as "Exhibit A," and by this reference an annexation made a part hereof, and a copy of which subpoena was delivered to Charles Helbing on or about the 11th day of April, 1940, and an identical subpoena served upon Alfred Fromm on or about April 24, 1940, as follows:

1. Quashing, suppressing and vacating said subpoenas and each of them, in their entirety.

2. Quashing, suppressing and vacating the paragraphs of said subpoenas, and each of them, which require the production of any books, documents or records purported to be described therein.

3. For such other additional or different relief as may be meet and proper in the premises.

Said motion will be and is hereby made upon the following grounds and each of them:

1. That said subpoenas, are and each is, so broad and indefinite in terms as to be unreasonable, oppressive and invalid.

2. That the books, documents, records and things purportedly described in and called for by said subpoenas constitute the private papers, property and effects of the individual members of the Local Union No. 42, United Brotherhood of Carpenters and Joiners of America, and each of them and are not subject to search and seizure.

3. That your moving parties, and each of them, in behalf of themselves, and each individual member of Local Union No. 42, United Brotherhood of Carpenters and Joiners of America, assert and stand upon their constitutional rights not to be compelled to be witnesses against themselves in a criminal action or proceeding, and assert and claim immunity.

4. That said subpoenas, and each of them, call for the giving of testimony and evidence in addition to the production of [969] things, and violates and are, and each is, contrary to the provision of the Fifth Amendment to the Constitution of the United States.

5. That the requirements of the subpoenas go further than the production of evidence in that the witnesses are commanded by their terms, and the terms of each, to testify and give evidence and establish the relationship of the books, records, and documents to the subjects enumerated.

6. That there is no showing of materiality or

pertinence of the documents, records or things purportedly described nor any sufficient identification of such documents, records or things.

7. That the enforcement of the subpoenas, or either of them, would constitute an unlawful search and seizure contrary to the Fourth Amendment to the Constitution of the United States.

The motion will be and is based on all records and files of the above entitled Court relating to the Grand Jury investigation and upon this notice of motion, together with the memorandum of points and authorities and the affidavit of Alfred Fromm filed herewith, and upon such additional evidence as may be adduced at the hearing of the motion.

Dated: April 24, 1940.

Exhibit "A" is identical with Exhibit "A" attached to Notice of Motion and Motion to Quash, Vacate and Suppress Subpoena filed by Charles Helbing, which is hereinafter set forth and which is incorporated by this reference.

JOSEPH O. CARSON, JR.

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for Local Union
No. 42, United Brotherhood
of Carpenters and
Joiners of America and
Alfred Fromm.

[Endorsed]: Filed Apr. 24, 1940. [970]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION TO
QUASH, SUPPRESS AND VACATE
SUBPOENAS DUCES TECUM

United States of America,

State of California,

City and County of ~~San Francisco~~ ss.

Alfred Fromm, being first duly sworn, deposes and says:

That he is a citizen of the United States and is the duly qualified and acting Recording Secretary of Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that said Local Union No. 42 of the United Brotherhood [971] of Carpenters and Joiners of America is a voluntary association, unincorporated, consisting of various individual members, all of whom are individual workmen practicing the trade of carpenters and joiners, and none of whom is a corporation.

That on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that a copy thereof is annexed as an exhibit to the motion filed herewith and by this reference is made a part hereof; that said subpoena was served upon Charles Helbing, business agent of said local union, and an identical subpoena as to form was served upon your affiant; that pursuant

to said subpoena your affiant appeared before the Grand Jury on April 24, 1940, to which time said proceeding had been continued.

That the papers, books, records and other documents purportedly described in said subpoena, and all things called for by said subpoena, are the papers, records and property of the individual members of said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that the production of the things called for in said subpoena is tantamount to a general examination of the affairs of your affiant and those of his fellow members of said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America, and requires evidence that said things relate to the subject purportedly described in said subpoena; that the effect of said subpoena is to constitute a fishing expedition without specification of the evidence desired or any showing of its materiality or pertinency; that said subpoena purports to require the determination by the party subpoenaed of all matters "related to" the subjects therein purportedly described, and its enforcement would seriously impair the business activities and conduct of the affairs of said association; that your affiant, in behalf of himself and in behalf of said Local [972] Union No. 42 of the United Brotherhood of Carpenters and Joiners of America, and each individual member thereof, desires to assert all existing constitutional guarantees and rights under Amendments 4 and 5 of the Constitu-

tion of the United States, including the rights of a person not to be compelled to be a witness against himself in a criminal proceeding and against self incrimination, and the rights to be secure against an unlawful search and seizure or unreasonable search and seizure of his person, property and effects.

ALFRED FROMM

Subscribed and sworn to before me this 24th day of April, 1940.

(Seal) ANTONIO M. COGLIANDRO

Notary Public in and for the City and County of San Francisco, State of California. My commission expires Dec. 31, 1942. [973]

On Monday, May 13, 1940, the following proceedings were had and taken before Honorable A. F. St. Sure, Judge, on the presentment of W. C. O'Leary and Charles Helbing, to the Court by the Grand Jury, and hearing of motion to squash and motion to suppress subpoena.

Counsel appearing for the Government, Morris R. Clark, Esq., Special Assistant to the Attorney General; for Charles Helbing and W. C. O'Leary, Hugh K. McKevitt, Esq., and Jack M. Howard, Esq.

"The Court: I understand, Mr. McKevitt, you wish to file a motion to squash and suppress subpoenas that have been issued in the matter of Local Union No. 42, United Brotherhood of Carpenters and Joiners of America?

"Mr. McKevitt: That is correct, and that ap-

plication goes to W. C. O'Leary, as well as to Charles Helbing, those two men named in our application. We would like to make the motion on the ground, or upon all the grounds stated in the notice, and based upon the affidavits which we supplied the Court, and copies of which we gave to Mr. Clark, your Honor, and also on points and authorities which we served and filed. Incidentally, the points and authorities are the same as those heretofore served in a similar matter, and which were argued before the Court.

"The Court: Yes. I presume the motion may be submitted at this time?

"Mr. McKevitt: It may.

"The Court: The motion is denied.

"Mr. McKevitt: May it please the Court, I understand, according to the rules, that we have an exception saved, but in a matter such as this it may be understood, and, furthermore, I would like it understood that these men are testifying pursuant to an order made by this Court and under compulsion.

"The Court: Are they present in court now? [974]

"Mr. McKevitt: The men are here, yes, your Honor.

"The Court: Mr. Helbing.

"Mr. McKevitt. Mr. O'Leary and Mr. Helbing.

"The Court: Charles Helbing and W. C. O'Leary. Gentlemen, I direct you to appear before the Grand Jury and to produce the documents

named in the subpoena which was attached to the notice of motion to quash here, and also to give your testimony, and, of course, it follows that if you do not do that you will be presented here for contempt and be subject to punishment for contempt of court. Is there anything further?

"Mr. Clark: I ask, your Honor, these gentlemen be directed to appear here before the Grand Jury on next Friday morning.

"The Court: Yes. I direct you, Mr. O'Leary and Mr. Helbing, to appear before the Grand Jury, in the Grand Jury room in this building, on next Friday morning at ten o'clock.

"Mr. O'Leary: Yes.

"Mr. Helbing: Yes.

"Mr. Clark: Your Honor, the Grand Jury had voted to present these gentlemen this morning for contempt, but in view of your Honor's order I do not presume that will be necessary.

"The Court: I hardly think so.

"Mr. McKevitt: Well, it might be understood they are present and your Honor has made—

"The Court: I have directed them and if they do not appear and give their testimony on next Friday morning they will be subject to contempt.

"Mr. McKevitt: I think that is clear.

"The Court: Don't you think that that is satisfactory?

"Mr. McKevitt: I think so.

"The Court: As I understand it from you, Mr. McKevitt and Mr. Howard, these gentlemen will

be presented to the Grand [975] Jury with the documents and will give their testimony on next Friday morning at ten o'clock?

"Mr. McKevitt: That is correct.

"Mr. Howard: I believe they had already declined to testify.

"Mr. Clark: The circumstances are these, your Honor, that the documents have been presented to the Grand Jury and the Grand Jury wishes to question, or to make certain investigations with regard to the contents of these documents, and to have Messrs. Helbing and O'Leary testify with regard to these documents, and Mr. O'Leary and Mr. Helbing appeared before the Grand Jury this morning, and after certain preliminary questions with regard to the documents and records produced refused to testify any further, and for that reason the Grand Jury felt they should be presented to the Court as contumacious.

"The Court: I don't think there can be any misunderstanding.

"Mr. McKevitt: I don't think so.

"The Court: It is understood these men are giving their testimony before the Grand Jury upon the direction of the Court. If they fail to do that they will be presented to the Court by the Grand Jury for punishment for contempt.

"Mr. McKevitt: That is correct.

[Endorsed]: Filed April 24, 1940. [976]

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION TO
QUASH, VACATE AND SUPPRESS
SUBPOENA.

To the United States of America and Frank Hennessey, Esq., United States Attorney for the Northern District of California, and to Morris R. Clark, Esq., Special Assistant to the Attorney General of the United States:

Notice is hereby given that W. C. O'Leary intends to and does hereby move the above entitled Court for an order with respect to the above entitled subpoena, a copy of one of which is hereunder annexed as "Exhibit A," and by this reference and annexation made a part hereof, and a copy of which subpoena was [977] served upon W. C. O'Leary on or about the 11th day of April, 1940, as follows:

1. Quashing, suppressing and vacating said subpoena in its entirety.

2. Quashing, suppressing and vacating the paragraphs of said subpoena, which require the production of any books, documents or records purported to be described therein.

3. For such other additional or different relief as may be meet and proper in the premises.

Said motion will be and is hereby made upon the following grounds and each of them:

1. That said subpoena is so broad and indefinite

in terms as to be unreasonable, oppressive and invalid.

2. That the books, documents, records and things purportedly described in and called for by said subpoena constitute the private papers, property, and effects of the individual members of Local Union No. 550, United Brotherhood of Carpenters and Joiners of America, and each of them, and are not subject to search and seizure.

3. That your moving party in behalf of himself and each individual member of Local Union No. 550, United Brotherhood of Carpenters and Joiners of America, asserts and stands upon the constitutional right not be compelled to be a witness against himself in a criminal action or proceeding, and asserts and claims immunity.

4. That said subpoena calls for the giving of testimony and evidence in addition to the production of things, and violates and is contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

5. That the requirements of the subpoena go further than the production of evidence in that the witness is commanded [978], by its terms to testify and give evidence and establish the relationship of the books, records and documents to the subjects enumerated.

6. That there is no showing of materiality or pertinence of the documents, records or things purportedly described nor any sufficient identification of such documents, records or things.

7. That the enforcement of the subpoena would constitute an unlawful search and seizure contrary to the Fourth Amendment to the Constitution of the United States."

The motion will be and is based on all records and files of the above entitled Court relating to the Grand Jury investigation and upon this notice of motion, together with the memorandum of points and authorities and the affidavit of W. C. O'Leary filed herewith, and upon such additional evidence as may be adduced at the hearing of the motion.

: - Dated: May 13, 1940.

JOSEPH O. CARSON, JR.

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for W. C. O'Leary [979]

EXHIBIT "A"

District Court of the United States

Northern District of California

Southern Division

The President of the United States of America
To Local No. 550, United Brotherhood of Carpen-
ters and Joiners of America (Millmen's Union)
2111 Webster Street, Oakland, California.

Greeting:

You and Each of You Are Hereby Commanded,
That all and singular business and excuses being

laid aside, you and each of you, be and appear in your proper person before the United States District Court, for the Northern District of California, at the Court Room, in the City and County of San Francisco, on the 15th day of April, A. D. 1940, at 10 o'clock in the forenoon, to Testify the Truth, and give evidence before the Grand Jury, and you are not to depart the Court without the leave of the Court or of the U. S. Attorney.

(Seal)

(Seal)

and bring with you and produce at the time and place aforesaid:

(1) Books or other documents or records showing the names of the officers, the directors, and the members of Local No. 550, United Brotherhood of Carpenters and Joiners of America, during the period from January 1, 1937, to date.

(2) All minute books and other papers, records, and documents containing the minutes or other records of proceedings including all motions offered and the action taken thereon at all meetings of (a) members, (b) directors, or (c) committees of Local No. 550, United Brotherhood of Carpenters and Joiners of America, from January 1, 1937, to date.

(3) All original contracts or agreements proposed, [1980], executed, or in effect (or copies thereof where the originals are not in the possession of Local No. 550, United Brotherhood of Carpenters and Joiners of America) at any time during the period from January 1, 1937, to date and relating to

(a) the requirement that the union label of

Local Unions No. 42 and No. 550 of the United Brotherhood of Carpenters and Joiners of America (sometimes known as the Millmen's Union) be affixed to any millwork sold or distributed in the San Francisco Bay Area;

(b) the prohibition and restriction of the distribution and sale in the San Francisco Bay area of millwork transported into said area from states other than the State of California;

(c) the prohibition and restriction of the distribution and sale in the San Francisco Bay Area of the so-called readi-cut or prefabricated type of dwelling house transported into said area from states other than the State of California;

between Local No. 550, United Brotherhood of Carpenters and Joiners of America and (a) Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America, (b) Lumber Products Association, Inc., (c) Bay Counties District Council of Carpenters, (d) Cabinet Manufacturers Institute of California, Inc., (e) Wood Products, Inc., and (f) Alameda County Building and Construction Trades Council.

(4) All original letters, telegrams, correspondence, reports, memoranda and other communications (or copies thereof where the originals are not in the possession of Local No. 550, United Brotherhood of Carpenters and Joiners of America) relating to the subjects and passing between the parties

set forth in paragraph numbered (3) above during the period from January 1, 1937, to date. [981]

(5) All general ledgers of Local No. 550, United Brotherhood of Carpenters and Joiners of America, from January 1, 1937, to date.

(6) All cash disbursement books of Local No. 550, United Brotherhood of Carpenters and Joiners of America, from January 1, 1937, to date.

(7) All cash receipt books of Local No. 550, United Brotherhood of Carpenters and Joiners of America, from January 1, 1937, to date.

(8) All check books and all cancelled checks of Local No. 550, United Brotherhood of Carpenters and Joiners of America, from January 1, 1937, to date.

And this you are not to omit, under pain of being adjudged guilty of a contempt of said Court.

Witness, the Hon. A. F. St. Sure, Judge of the United States District Court for the Northern District of California, and the seal of the said Court, this 11th day of April, in the year of our Lord, one thousand nine hundred and forty and the Independence of the United States of America the one hundred and sixty-fourth.

(Seal)

WALTER B. MALING,
Clerk.

By M. E. VAN BUREN,
Deputy Clerk. [982]

[Title of District Court and Cause.]

**AFFIDAVIT IN SUPPORT OF MOTION TO
QUASH, SUPPRESS AND VACATE SUB-
POENA DUCES TECUM.**

United States of America,
State of California,
City and County of San Francisco—ss.

W. C. O'Leary, being first duly sworn, deposes
and says:

That he is a citizen of the United States and is
the duly qualified and acting business representa-
tive of Local Union No. 550 of the United Brother-
hood of Carpenters and Joiners of America; that
said Local Union No. 550 of the United Brother-
hood of Carpenters and Joiners of America is a
voluntary association, unincorporated, consisting of
various individual members, all of whom are indi-
vidual workmen practicing the trade of carpenters
and joiners, and none of whom is a corporation.

That on the 11th day of April, 1940, a subpoena
duces tecum was issued out of the above-entitled
Court directed to Local Union No. 550 of the United
Brotherhood of Carpenters and Joiners of America;
that a copy thereof is annexed as an exhibit to the
motion filed herewith and by this reference is made
a part hereof; that said subpoena was served upon
affiant; that pursuant to said subpoena, your affiant
appeared before the Grand Jury on May 13th, [1983]
1940, to which time said proceeding had been con-
tinued;

That the books, papers, records and other documents purportedly described in said subpoena, and all things called for by said subpoena, are the papers, records and property of the individual members of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America; that the production of the things called for in said subpoena is tantamount to a general examination of the affairs of your affiant and those of his fellow members of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, and requires evidence that said things relate to the subjects purportedly described in said subpoena; that the effect of said subpoena is to constitute a fishing expedition without specification of the evidence desired or any showing of its materiality or pertinency; that said subpoena purports to require the determination by the party subpoenaed of all matters "related to" the subjects therein purportedly described, and testimony relating thereto; that your affiant, in behalf of himself and in behalf of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, and each individual member thereof, desires to assert all existing constitutional guarantees and rights under Amendments 4 and 5 of the Constitution of the United States, including the rights of a person not to be compelled to be a witness against himself in a criminal proceeding and against self incrimination, and the rights to be secure against an un-

lawful search and seizure or unreasonable search and seizure of his person, property and effects.

W. C. O'LEARY

Subscribed and sworn to before me this 13 day of May, 1940.

AMY B. TOWNSEND,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires October 29, 1942. [984]

In the District Court of the United States for the Northern District of California, Southern Division.

No. 2734

In the matter of the Subpoena returnable before the Grand Jury impanelled by the Honorable A. F. St. Sure, Judge of the above entitled Court, which Subpoena was issued out of and under the Seal of said Court and directed to Local Union No. 42, United Brotherhood of Carpenters and Joiners of America.

NOTICE OF MOTION AND MOTION TO QUASH, VACATE AND SUPPRESS SUBPOENA.

To the United States of America, and Frank Hennessy, Esq., United States Attorney for the Northern District of California, and to Morris

R. Clark, Esq., Special Assistant to the Attorney General of the United States:

Notice is hereby given that Charles Helbing intends to and does hereby move the above entitled Court for an order with respect to the above subpoena, a copy of which subpoena is hereunder annexed and "Exhibit A" and by this reference and annexation made a part hereof, and a copy of which subpoena was served upon Charles Helbing on or about the 11th day of April, 1940, as follows: [985]

1. Quashing, suppressing and vacating said subpoena in its entirety.

2. Quashing, suppressing and vacating the paragraphs of said subpoena, which require the production of any books, documents or records purported to be described therein.

3. For such other additional or different relief as may be meet and proper in the premises.

Said motion will be and is hereby made upon the following grounds and each of them:

1. That said subpoena is so broad and indefinite in its terms as to be unreasonable, oppressive and invalid.

2. That the books, documents, records and things purportedly described in and called for by said subpoena constitute the private papers, property and effects of the individual members of the Local Union No. 42, United Brotherhood of Carpenters and Joiners of America, and each of them, and are not subject to search and seizure.

3. That your moving party, in behalf of himself, and each individual member of Local Union No. 42, United Brotherhood of Carpenters and Joiners of America asserts and stands upon the constitutional right not to be compelled to be a witness against himself in a criminal action or proceeding, and asserts and claims immunity.

4. That said subpoena, calls for the giving of testimony and evidence in addition to the production of things, and violates and is contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

5. That the requirements of the subpoena go further than the production of evidence in that the witness is commanded by its terms to testify and give evidence and establish the relationship of the books, records and documents to the subjects enumerated. [986]

6. That there is no showing of materiality or pertinence of the documents, records or things purportedly described nor any sufficient identification of such documents, records or things.

7. That the enforcement of the subpoena would constitute an unlawful search and seizure contrary to the Fourth Amendment to the Constitution of the United States.

The motion will be and is based on all records and files of the above entitled Court relating to the Grand Jury investigation and upon this notice of motion, together with the memorandum of points and authorities and the affidavit of Charles Helbing,

filed herein, and upon such additional evidence as may be adduced at the hearing of the motion.

Dated: May 13th, 1940.

JOSEPH O. CARSON, JR.

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for Charles Helbing.

EXHIBIT "A"

District Court of the United States

Northern District of California

Southern Division

**The President of the United States of America
To Local No. 42, United Brotherhood of Carpenters
and Joiners of America (Millmen's Union)**

200 Guerrero Street

San Francisco, California. Greeting:

**You and Each of You Are Hereby Commanded,
That all and singular business and excuses being
laid aside, you and each of you be and appear in
your proper person before the United States [987]
District Court for the Northern District of Cali-
fornia, at the Court Room, in the City and County
of San Francisco, on the 15th day of April, A. D.
1940, at 10 o'clock in the forenoon, to Testify the
Truth, and give evidence before the Grand Jury,
and you are not to depart the Court without the
leave of the Court or of the U. S. Attorney.**

(Seal)

(Seal)

and bring with you and produce at the time and place aforesaid:

(1) Books or other documents or records showing the names of the officers, the directors, and the members of Local No. 42, United Brotherhood of Carpenters and Joiners of America during the period from January 1, 1937, to date.

(2) All minute books and other papers, records, and documents containing the minutes or other records of proceedings including all motions offered and the action taken thereon at all meetings of (a) members, (b) directors, or (c) committees of Local No. 42, United Brotherhood of Carpenters, and Joiners of America from January 1, 1937, to date.

(3) All original contracts, or agreements proposed, executed, or in effect (or copies thereof where the originals are not in the possession of Local No. 42, United Brotherhood of Carpenters and Joiners of America) at any time during the period from January 1, 1937, to date and relating to

- (a) the requirement that the union label of Local Unions No. 42 and No. 550 of the United Brotherhood of Carpenters and Joiners of America (sometimes known as the Millmen's Union) be affixed to any millwork sold or distributed in the San Francisco Bay Area;
- (b) the prohibition and restriction of the distribution and sale in the San Francisco Bay Area of millwork transported into said area from states other than the State of California; [988]

(c) the prohibition and restriction of the distribution and sale in the San Francisco Bay Area of the so-called read-cut or prefabricated type of dwelling house transported into said area from states other than the State of California;

between Local No. 42, United Brotherhood of Carpenters and Joiners of America and (a) Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, (b) Bay Counties District Council of Carpenters, (c) Lumber Products Association, Inc., (d) Cabinet Manufacturers Institute of California, Inc., (e) Wood Products, Inc., and (f) Alameda County Building and Construction Trades Council.

(4) All original letters, telegrams, correspondence, reports, memoranda and other communications (or copies thereof where the originals are not in the possession of Local No. 42, United Brotherhood of Carpenters and Joiners of America) relating to the subjects and passing between the parties set forth in paragraph numbered (3) above during the period from January 1, 1937, to date.

(5) All general ledgers of Local No. 42, United Brotherhood of Carpenters and Joiners of America from January 1, 1937, to date.

(6) All cash disbursement books of Local No. 42, United Brotherhood of Carpenters and Joiners of America from January 1, 1937, to date.

(7) All cash receipt books of Local No. 42,

United Brotherhood of Carpenters and Joiners of America from January 1, 1937, to date.

(8) All check books and all cancelled checks of Local No. 42, United Brotherhood of Carpenters and Joiners of America from January 1, 1937, to date.

And this you are not to omit, under pain of being adjudged guilty of a contempt of said court.

Witness, the Hon. A. F. St. Sure, Judge of the United [989] States District Court for the Northern District of California, and the seal of the said Court, this 11th day of April, in the year of our Lord, one thousand nine hundred and forty and of the Independence of the United States of America the one hundred and sixty-fourth.

WALTER B. MALING,

Clerk.

(Seal)

By M. F. VAN BUREN,

Deputy Clerk. [990]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION TO
QUASH, SUPPRESS AND VACATE SUB-
POENA DUCES TECUM.

United States of America,

State of California,

City and County of San Francisco—ss.

Charles Helbing, being first duly sworn, deposes and says:

That he is a citizen of the United States and is the duly qualified and acting business representative of Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America is a voluntary association, unincorporated, consisting of various individual members, all of whom are individual workmen practicing the trade of carpenters and joiners, and none of whom is a corporation.

That on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that a copy thereof is annexed as an exhibit to the motion filed herewith and by this reference is made a part hereof; that said subpoena was served upon affiant; that pursuant to said subpoena your affiant appeared before the Grand Jury on May 13th, 1940, to which time said proceeding had been continued;

That the papers, books, records and other documents purportedly described in said subpoena, and all things called for by said subpoena, are the papers, records and property of the individual members of said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that the production of the things called for in said subpoena is tantamount to a general examination of the affairs of your affiant and those of his fellow members of said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of

America, and require evidence that said things relate to the subject pur- [991] portedly described in said subpoena; that the effect of said subpoena is to constitute a fishing expedition without specification of the evidence desired or any showing of its materiality or pertinency; that said subpoena purports to require the determination by the party subpoenaed of all matters "related to" the subjects therein purportedly described and testimony relating thereto; that your affiant, in behalf of himself and in behalf of said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America, and each individual member thereof, desires to assert all existing constitutional guarantees and rights under Amendments 4 and 5 of the Constitution of the United States, including the rights of a person not to be compelled to be a witness against himself in a criminal proceeding and against self incrimination, and the rights to be secure against an unlawful search and seizure or unreasonable search and seizure of his person, property and effects.

CHARLES HELBING.

Subscribed and sworn to before me this 13th day of May, 1940.

AMY B. TOWNSEND,

Notary Public in and for the
City and County of San
Francisco, State of Cali-
fornia.

My commission expires October 29, 1942. [992]

From the Reporter's transcript of the Grand Jury which returned the indictment, showing proceedings taken on Wednesday, April 24, 1940, ten o'clock, A. M., relative to the defendant David H. Ryan:

Mr. Clark: Call Mr. Ryan.

DAVID H. RYAN,

Called as a witness; (previously sworn)

Mr. Clark: Q. Mr. Ryan, I believe you are the Secretary or President of the Bay District Council of Carpenters? A. Secretary-Treasurer.

Q. And in your capacity as that officer of the Bay Counties District Council of Carpenters, do you have custody of the records of that organization? A. I have.

Q. Were you ever served with a subpoena issuing from the United States District Court, directing you to produce certain documents and records more specifically named and described in that subpoena before this Grand Jury?

A. I desire to read a statement.

Q. No. Answer the question please, if you will. I simply asked you if you were served with a subpoena calling for the production of those documents? A. I was, yes.

Q. Now, in response to that subpoena, have you produced those documents here this morning? Now, if you want to read your statement, you may at this time.

The Witness: I have them with me, but I desire to read a statement.

(Testimony of David H. Ryan.)

Mr. Clark: All right. If it is satisfactory to the members of the Grand Jury, it is satisfactory to the Government that you read the statement.

The Witness (Reading): "I am here under compulsion of a subpoena since the claim may be made and indeed has been made, that I may be involved in alleged offenses. I assert my [993] constitutional right not to be compelled in a criminal action to be a witness against myself. I am advised by counsel that I can be denied that right only if I am offered immunity from prosecution for or on account of any transaction, matters or things concerning which I may testify or produce evidence. I therefore elect to stand on my aforesaid constitutional rights unless it be stated on the record that the government elects to grant me immunity.

"I am advised by counsel that inasmuch as the Bay Counties District Council of the United Brotherhood of Carpenters and Joiners of America is an unincorporated voluntary association of individuals, the records of said Council, in so far as they exist, are the private notes and papers of the various members of the Council, and therefore are not subject to subpoena under a constitutional guaranty against unreasonable search and seizure and against an individual being required to produce evidence against himself."

Mr. Clark: Q. Now, Mr. Ryan, you said that you have been so advised by counsel.

The Witness: The statement so says.

Q. Might I ask, Mr. Ryan, if that statement you

(Testimony of David H. Ryan.)

have just made was prepared by you or by your counsel?"

A. I do not care to answer that.

Q. Might I inquire, Mr. Ryan, who your counsel is? A. I refuse to answer that.

Q. You have just refused to answer two questions that I asked you. Might I ask upon what grounds you base that refusal?

A. Well, I desire to read a second statement in relation to my rights as an individual, if I may. (Reading):

"I am here pursuant to the direction of a subpoena which states that inquiry is being made as to alleged offenses against the anti-trust laws of the United States. I am advised that [994] claim is or may be made that I am or may be involved in the commission of such alleged offenses. I assert the right guaranteed me by the Constitution of the United States not to be compelled in a criminal action to be a witness against myself. I am advised by counsel that under the statutes of the United States I can be denied my right under this constitutional guaranty only if I am offered an immunity from prosecution for or on account of any transaction, matter or thing concerning which I may testify or produce evidence. I therefore choose to stand upon my aforesaid constitutional rights, unless I am informed on the record that the United States elects to afford me immunity as aforesaid."

Mr. Clark: Q. Now, Mr. Ryan, would you read the first sentence of that statement again?

(Testimony of David H. Ryan.)

The Witness (Reading): "I am here pursuant to the direction of a subpoena which states that inquiry is being made as to alleged offenses against the anti-trust laws of the United States."

Mr. Clark: Q. Now, Mr. Ryan, have you examined the subpoena that was served on you?

A. I am going to refuse to answer any further questions.

Mr. Clark: Well, for the purpose of the record, Mr. Reporter, I would like to say that the Government refuses to grant Mr. Ryan immunity, and for the purpose of the record I would like to make the statement that the subpoena speaks for itself, and that the subpoena directed to the Bay Counties District Council of Carpenters makes no mention that the Bay Counties District Council of Carpenters, or Mr. Ryan as Secretary thereof, is being investigated or subject to any criminal action on the part of the United States in connection with any offenses or alleged offenses under the Anti-Trust Laws of the United States.

Mr. Foreman: I would suggest that Mr. Ryan be excused and asked to wait in the witness room pending the pleasure of the [995] grand jury.

The Foreman: You are excused temporarily and if you will wait for us in the witness room, Mr. Ryan.

The Witness: I will wait.

(The witness was temporarily excused and left the room.)

From the Grand Jury proceedings of Monday, May
13, 1940, ten o'clock, A. M.:

DAVID H. RYAN,

called as a Witness.

The Foreman: You do solemnly swear that you will keep secret the testimony you are about to give before this Grand Jury, and you will testify to the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Ryan: I do.

Mr. Clark: Q. You have been sworn heretofore and you have testified?

A. Yes, I have, Mr. Clark.

Q. Now, Mr. Ryan, before I start my line of questioning, the other two gentlemen who have been here have indicated that they wish to stand on their constitutional rights and refuse to answer questions. Now, is it your intention to stand on your constitutional rights and claim the privilege given you, or not?

A. I desire to make a statement in relation to the matter, yes. I want it understood, and the record to show, that I am here under the compulsion of the subpoena previously served upon me, and the order of the Court requiring me to testify, and I am testifying and giving evidence only by reason thereof, and not otherwise; that in testifying, or giving evidence, I am not waiving any constitutional rights or guarantees, but on the contrary that I continue to assert such rights to claim all immunity existing

(Testimony of David H. Ryan.)

under the laws of the United States for myself, and jointly [996] and separately for the Association to which said subpoena is directed, and for each individual member thereof.

Mr. Clark: For the sake of the record, Mr. Reporter, let it be shown that the Government refuses to grant Mr. Ryan immunity by virtue of any testimony he may give here with regard to the documents that will be presented to him for his examination.

Q. Mr. Ryan, I hand you a document dated "San Francisco, California, September 21, 1936," which is signed by the United Brotherhood of Joiners and Carpenters of America, Millmen's Union No. 42 and 550, and is also signed by the Bay Counties District Council of Carpenters by D. H. Ryan. I hand that to you and ask you if that is your signature.

A. Yes, that is my signature.

Q. Do you recall the circumstances under which that contract was negotiated; that is, the contract of September 21, 1936?

A. Our agreements with the employer signatories to this agreement, as well as all other agreements, are negotiated by agreements with the employer signatories to this agreement, as well as all other agreements, are negotiated through conference committees selected by the parties to the agreement, who meet in conference and agree to the terms and stipulations of the agreement, and in some instances where certain questions can't be agreed to, submit the points in dispute for arbitration.

(Testimony of David H. Ryan.)

Q. Now, in connection with the contract that I have just handed you, Government's Exhibit No. 288, did you personally sit in at these negotiations?

A. Yes.

Q. Now, I notice that the contract is signed by Locals 42 and 550 of the United Brotherhood of Joiners and Carpenters of America. Will you tell the Grand Jury what relation exists between the Bay Counties District Council of Carpenters, who is a signatory here, and Locals 42 and 550?

A. The law in the constitution of the United Brotherhood of Carpenters and Joiners of [997] America requires each, or all local unions chartered by it in a city, or a locality, where there are two or more local unions that will form a central body known as a district council; and to affiliate with a district council. The district council so formed is chartered, too, by the Brotherhood of Carpenters, and is referred to, generally speaking, as the parent body in that district. That is the relationship existing between the District Council of Carpenters and the Local Unions of Carpenters in any district.

Q. Now, how does it happen, Mr. Ryan, that the Bay Counties District Council of Carpenters appears as a signatory to this agreement?

A. It is customary for the Bay Counties District Council to approve all agreements negotiated by Local Unions affiliated with that council. They have to later on be approved by the General Office of the United Brotherhood, also.

(Testimony of David H. Ryan.)

Q. Now, you say it is customary for all agreements between Local Unions to be approved by the Bay District Council of Carpenters. Is it not a fact that it is obligatory for them to be so approved?

A. Well, I cannot recall the exact wording, but I don't know of any instances where it has not been done.

Q. To the best of your knowledge, it is done on all occasions?

A. Yes, to the best of my knowledge it is done in all cases where unions are affiliated with the council.

Q. After these agreements have been negotiated and have been signed by the representative locals involved and the Bay Counties District Council of Carpenters, then what is the next procedure?

A. The agreement is submitted to the General Office of the United Brotherhood of Joiners and Carpenters of America at Indianapolis.

Q. At Indianapolis, and Mr. Hutchison is President of the Organization, is that correct?

A. William L. Hutchison is President.

Q. Is that a customary procedure, or is it an obligatory procedure?

A. That is mandatory.

[998]

Q. That is mandatory?

A. That is—well, I don't want—that is mandatory.

Q. Do you know whether those agreements are

(Testimony of David H. Ryan.)

occasionally sent on by mail to the General Office?

A. Sure, yes.

Q. Does a letter of transmittal accompany those agreements?

A. That is the usual procedure, yes.

Q. When they are returned does a letter of transmittal accompany the returned document from the General Office at Indianapolis?

A. That is true in most cases.

Q. When they are returned, are they returned to the respective locals, or are they returned to the Bay Counties District Council of Carpenters?

A. They are usually returned to the Bay Counties District Council of Carpenters.

Q. Mr. Ryan, an examination of the correspondence submitted here by the Bay Counties District Council of Carpenters fails to disclose either a letter of transmittal from the Bay Counties District Council of Carpenters to the General Office in Indianapolis, or a return letter of transmittal from the General Office in Indianapolis to the Bay Counties District Council of Carpenters. Can you explain the absence of those two letters if present from the documents submitted here for the inspection of the Grand Jury?

A. In relation to this agreement?

Q. To this agreement.

A. Well, I can't recall now whether such letters were sent or received. Off the record, I am not familiar with your procedure, how far I am

(Testimony of David H. Ryan.)

allowed to go to amplify my remarks, but if I may be permitted—

Q. Certainly.

A. The General Office of the Brotherhood has what is referred to and called General Representatives of the General Office throughout the United States. There are two of them at the present time in California.

Q. Will you state their names?

A. J. F. Cambiano is one representative of the General President, and Don Cameron is another. [999] It sometimes occurs that in the negotiating of agreements, or the consummation of the agreements, correspondence, or telephones, or wires are transmitted back and forth in regard to it by his personal representative. Now, that is not always the case. I cannot recall at the present time just what transpired at this particular time.

Q. Now, referring you to the signatory page in Government's Exhibit No. 288, I will ask you if there is anything on that document to indicate it is approved either by the General Office in Indianapolis or by any representative of the General Office here in California?

A. Are you referring to this?

Q. Yes.

A. I don't know whether this particular section or paragraph of the agreement was referred to any representative of the General Office, but it is my opinion that it was not. This deals with the

(Testimony of David H. Ryan.)

determination of what work was to be completed under the one scale and what work would come under the other scale. That would be a matter which the General Office presumably would not be consulted upon.

Q. So it would be your opinion that that is a document that would not result in consultation with the general office?

A. I don't recall at any time of submitting a matter of that kind to the general office where say an increase of wages is negotiated under a new agreement. It is necessary to stipulate upon what work that new agreement becomes effective. It is customary that work contracted for, or work upon which bids have been submitted and accepted at the lower rate shall be completed and finished at that rate. The purpose of that particular clause is on the same committee set-up to determine the rate on the particular jobs in question.

Q. Would you read paragraph XVI. of that agreement to the grand jury, Mr. Ryan?

A. Read this aloud?

Q. Yes, read it aloud.

A. "In the interests of standardization of rates of wages and working conditions, it is agreed that no [1000] material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills, or Cabinet Shops, or their distributors that do not conform to the rates of wage and work-

(Testimony of David H. Ryan.)

ing conditions of this agreement. The purchase of and the working of the following products is excepted," listing the excepted material. That is quite familiar to me, Mr. Clark.

Q. Now, I hand you herewith a document marked Government's Exhibit 279, which is dated August 10, 1939, and ask you to state to the best of your knowledge what that document is.

A. "It is understood between the Company and the Union that this section is being included with the complete understanding that in this, and further agreements, wage rates of the Redwood Manufacturers Company must be competitive with competing manufacturers whose plants are located outside the six counties involved in this agreement. In general, such competition is as listed in Section No. 20."

Q. Well, I was not particularly concerned with your reading that paragraph, Mr. Ryan. Is this the present working agreement between Local 550—first I will ask you, is that your signature to the document there?

A. That is my signature, yes.

Q. Will you state to the best of your knowledge what that document is?

A. This is an agreement entered into between the Lumber Products Association, Incorporated, and Millmen's Union 42 and 550, District Council of Carpenters.

Q. Did you sit in on the negotiations leading up to the signing of that agreement?

(Testimony of David H. Ryan.)

A. I did. May I amplify my remarks? In both of these agreements just submitted, the section I read there, the General Office refused to endorse it. That agreement was never perfected and approved by the General Office.

Q. Referring to this agreement?

A. The one I read just previous to this, in which I read the section. General President [1001] Hutchison came out here, himself.

The Foreman: So then it is possible, Mr. Helbing, that even after the District Council—

The Witness: Mr. Ryan.

The Foreman: I beg your pardon, Mr. Ryan. It is possible even after the District Council has approved an agreement that the General Office might still refuse its consent?

A. It is not consummated unless the General Office agrees to it. It may mean a telephonic conversation, or mean the signature of a witness, and then they sometimes take the matter up.

Mr. Clark: Q. Well, do I understand you to say, Mr. Ryan, that this agreement, Government's Exhibit 288, from which you read this clause, was never consummated, never became effective?

A. Is that the last one?

Q. That was the last from which you read Section 16.

A. This was not approved by the General Office.

Q. Well, that was not my question. I asked

(Testimony of David H. Ryan.)

you whether or not it was ever effective, and whether Locals 42 and 550 ever worked under the terms of that agreement.

A. In answer to that may I say this: Yes; this agreement, those clauses arose out of an arbitration award arbitrating questions in dispute that could not be agreed in conference between the planing mill owners in San Francisco, the cabinet manufacturers, and the planing mill owners in Alameda County. When the award was handed down by Judge Walter Perry Johnson, the arbitrator, in which the scale was raised from \$8. to \$9, the planing mill owners in Alameda County refused to recognize the award in Alameda County. Planing mill owners and cabinet manufacturers recognized the award in San Francisco County. After some considerable delay and only after a stipulation was entered into, or agreed to, whereby that if any place or mill in Alameda County refused to pay the \$9 as awarded by the arbitrator after October 1st of that year, that we would not permit our men to work there. There was a [1002] long interval of time from the time the award was handed down until, October 1st, resulting in General President Hutchison coming here to San Francisco, into this District, refusing to approve that particular clause in which it is stated that we would handle no material or products coming in here unless made under similiar conditions. As a result of all the conferences held at that time they entered into a com-

(Testimony of David H. Ryan.)

promise scale of \$8.50 to apply to the six counties, instead of four counties, but that particular clause in that particular agreement was a clause that was not approved by the general office.

Q. Am I correct in my understanding that as a result of this agreement entered into, certain clauses in which were objectionable to Mr. Hutchison, that he came out here personally and took part in these negotiations?

A. Yes. Not in the original negotiations, but he took part in the dispute that arose as to what territory was covered by the award, and the form and phraseology and the stipulations of the agreement.

Q. Do you recall the date when he was out here, Mr. Ryan? A. No.

Q. Would you say it was in 1938?

A. Yes.

Q. Now, I hand you herewith Government's Exhibit No. 301, which is entitled, "Agreement Embodying Employer-Employee Agreement of Wages, Hours, and Working Conditions," and ask you if that is the agreement whereof the agreement embodied in Government's Exhibit 288 was copied?

A. This was an agreement entered into by the Cabinet Manufacturers. I believe there was one signed by the Planing Mill Owners, also, in which over their signatures they agreed to the \$9 scale I have just referred to as made by the Arbitration Award.

(Testimony of David H. Ryan.)

Q. That was after Mr. Hutchison had been out here and taken personal part in the negotiating of this settlement, was it not?

A. No. What is the date of this?

Q. I think it is August of 1938.

A. No. He was here later. I [1003] can recall that he was here—I was in the hospital from the 11th of October, 1938, for fifteen days. He was here while I was in the hospital in October.

Q. Now, Government's Exhibit No. 301 states that "The memorandum as to payment of wages established by arbitration effective next pay day, dated August, 1938, is hereby made void." Would you explain that provision?

A. Well, may I explain this, gentlemen, that the award was handed down, and after the Planing Mill Owners in San Francisco and the Cabinet Manufacturers had agreed to recognize it, having refused to for a long time because Alameda County did not, the local unions and the manufacturers set up a committee to take care of these contracts, and it is my recollection that the Cabinet Manufacturers and the Planing Mill Owners refused to pay the money to their employees, that additional dollar, but agreed to set aside a dollar. That is my recollection, and they had an arrangement set up in that light between the representatives of the two unions and the Cabinet Manufacturers and the Planing Mill Owners, the details of which I am not familiar with.

(Testimony of David H. Ryan.)

Q. Now, Mr. Ryan, we have had testimony before this Grand Jury that after the award was made Mr. Hutchisen came out, and I think the language used by the witnesses was that he kicked over the award. Do you recall anything in that connection?

A. Well, I don't know what term you may use, but he absolutely refused to approve it with that clause in it.

Q. Do you recall the date of the award?

A. No. It was around, I believe, in July. I think it was handed down in July of 1938.

Q. Well, in any event, it was prior to the date of this document, is that correct?

A. Yes, yes; it was prior to the date of that document.

Q. Now, directing your attention to this document which states in paragraph XVII., which is the paragraph you previously read:

Paragraph XVII. is changed by mutual agreement to read as follows: [1004]

XVII. In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto. The purchase, working and sales of the

(Testimony of David H. Ryan.)

following products is excepted"—then follows a list.

"XVIII. The purchase and sale of the following products is excepted—then follows a list.

"Nothing here is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws."

Now, might I ask you if, to the best of your recollection, that paragraph was inserted at Mr. Hutchison's suggestion after he came out here?

A. Well, the best of my recollection, General President Hutchison objected to the clause on the ground that it might be interpreted as a violation of federal law. I couldn't testify whether General President Hutchison wrote that clause as a substitute, but it was so written to meet his objection.

Q. I see.

A. I don't know, I cannot testify who wrote it, but as re-written it met his—overcame his objection, met his approval as re-written, as I understand it.

Q. Now, re-directing your attention to Government's Exhibit 279, which is the present working agreement with Lumber Products Association, Inc., I call your attention to the fact that Mr.

(Testimony of David H. Ryan.)

Cambiano's signature appears there, and ask you the circumstances under which Mr. Cambiano affixed his signature?

A. ° Well, this happened after we had went to the trouble of negotiating this [1005] agreement, just before that arbitration proceeding, and the award handed down, and then had through the Joint Conference Committee drawn up and signed an agreement just referred to here, which was refused the approval of our General Office. The employers, then, I cannot recall the date if I knew that, but they just emphatically refused to negotiate any further unless a representative of the general office sat in.

Now, Representative Cambiano, whose signature is on this agreement, came in and sat down in the conference with them and stated in effect that he could not put his signature on this and in doing so give approval of the General Office, but he would sign it as a witness, but after he did that it would still have to be approved by the General Office. Then he put his signature there, as it says, as a witness, on there.

Q. I think that is correct.

A. Yes. "General Representative," signed "J. F. Cambiano, Witness." I recall him explaining to them that he didn't have, as a representative of the General Office, the authority to sign a document or agreement, and in so doing commit the General Office, but signing that way that overcame their objection in a measure, at least, not altogether.

(Testimony of David H. Ryan.)

Q. To the best of your knowledge was this present working agreement as embodied in Government's Exhibit 279 approved by the General Office?

A. All of the stipulations in it, Mr. Clark, in relation to the wage scale and hours, conditions, to the best of my recollection were approved, but that particular clause in which we would not handle this, or handle something else, that was the one that he specifically refused to approve, and it had to be removed from it. The rest of it he had—he had no objection to the men getting \$9 who were getting \$8, and all that, but he wouldn't approve that.

Q. Then your present working agreement doesn't contain the restrictive clause that was read? A. No. [1006]

The Foreman: Q. And did the removal of that clause, upon the removal it did receive the approval of the General Office?

A. Well, so far as I know. I want to say you are referring to this as an existing agreement. It expired May 1st. We are now trying to negotiate an agreement now from May 1, 1940, on.

Mr. Clark: Q. Well, in the meantime you are continuing to work under the present terms and provisions?

A. We are working under the wage scale and other provisions of the agreement right along.

The Foreman: You may be excused, Mr. Ryan.

(Testimony of David H. Ryan.)

Mr. Clark: Has any member of the Grand Jury a question?

The Foreman: Then, Mr. Ryan, you may be excused and I would like to thank you, certainly, for myself and I am sure on behalf of the jury. ●

The Witness: It was quite a pleasure, I assure you.

(Witness excused and retired from the room.)

From the Reporter's transcript of the Grand Jury which returned the indictment, showing proceedings taken on Monday, May 13, 1940, relative to the defendant Walter C. O'Leary:

WALTER C. O'LEARY

called as a witness.

The Foreman: You do solemnly swear that you will keep secret the testimony you are about to give before this Grand Jury, and that you will testify to the truth, the whole truth, and nothing but the truth, so help you God?

Mr. O'Leary: Yes.

Mr. Clark: Q. Mr. O'Leary, you have appeared here as a witness before, have you not?

A. Yes.

Q. Are you the business representative of Local 550 of the United [1007] Brotherhood?

A. I wish to read a statement, Mr. Attorney.

Mr. Clark: You may proceed.

The Witness: If I may. I am here pursuant to

(Testimony of Walter C. O'Leary.)

the direction of a subpoena which states that inquiry is being made as to alleged offenses against the Anti-Trust Laws of the United States. I am advised that claim is or may be made that I am or may be involved in the commission of such alleged offenses. I assert the right guaranteed to me by the Constitution of the United States not to be compelled in a criminal action to be a witness against myself. I am advised by counsel that under the statutes of the United States I can be denied my rights under this—I am advised by counsel that under the statutes of the United States I can be denied my rights under this constitutional guarantee unless I am offered immunity from prosecution for or on account of any transaction, matter or thing concerning which I may testify or produce evidence. I therefore choose to stand upon my constitutional rights unless I am informed on the record that the United States elects to offer me immunity as stated.

Mr. Clark: In other words, Mr. O'Leary, you decline to answer any questions that may be put to you unless you are granted immunity?

A. I do.

Mr. Clark: For the sake of the record, Mr. Reporter, let it be shown that the Government refuses to grant Mr. O'Leary immunity.

Q. Now, Mr. O'Leary, I am going to ask you certain questions and you can refuse to answer them.

I refer to this book which is entitled "United

(Testimony of Walter C. O'Leary.)

Brotherhood of Carpenters and Joiners of America—Minute Book of Local Union No. 550, Oakland, California," and I refer specifically to the minutes of October 14, 1938, where it is stated,—

"Vote on a compromise offer by the Mill Owners to take effect in six counties, namely, Santa Clara, San Mateo, San Francisco, Marin, Alameda and Contra Costa, presented by Brother Joe Cambiano, [1008] Organizer of United Brotherhood of Carpenters and Joiners of America, Union Closed Shop Agreement wages set at \$8.50 and \$7.70. Business Agent O'Leary was called and explained that he had went around with Business Agent Wilcox of No. 42 and William Kelly, President of the Conference Committee, and Joe Cambiano, of the United Brotherhood, and contacted the Mill Owners Association heads in all the above counties. Brother Cambiano gave us a good talk on the proposed agreement and urged its adoption. A motion was made and seconded that we approve and adopt the recommendation of the Conference Committee as submitted by the Mill Owners. Board Member Abe Muir was present and gave his usual good talk and stated he did not want to hear any criticism of the Committee, as he felt they had done good work."

Now, directing your attention to those minutes, have you any recollection concerning the circumstances of that meeting?

A. Well, I am standing on this letter, Mr. Attorney.

(Testimony of Walter C. O'Leary.)

Q. All right. In other words, you refuse to answer?

A. I do, on the statement.

Q. Now, directing your attention to the minutes of October 21st, 1938, where the following entry appears:

"Brother Kelly, of No. 42, was called and stated we all had lots of work ahead to keep all counties in line. Brother Irish reported for the Conference Committee stating General President Hutchinson was present. The Committee was well pleased to meet him. He discussed our situation with us and answered many questions. Brother Brock and Craft, of Local 42, were present and responded with a few remarks. Brother Cambiano stated for our benefit that under no circumstances can our stamps leave the shop, which is the law of the United Brotherhood."

Do you recall the circumstances of that meeting, Mr. O'Leary?

A. I will stand on this statement read here, Mr. Attorney.

Q. You refuse to answer the question?

A. I do. [1009]

The Foreman: Then, Mr. O'Leary, we will ask you to await us in the witness room. You are excused, sir, temporarily.

The Witness: All right.

(The witness excused and retired from the room.)

From the Grand Jury proceedings of Friday, May 17, 1940, ten o'clock, A. M.:

WALTER C. O'LEARY

Called as a witness; sworn by the Foreman.

Mr. Morris R. Clark: Q. Mr. O'Leary, you were directed, were you not, by the Court last Monday to appear here to-day and give your testimony with regard to the records that were produced by you pursuant to subpoena duces tecum?

A. I was.

Q. And you are appearing this morning pursuant to the Court's order, is that correct?

A. Yes, sir.

Q. Now, I hand you a book which on its first page bears the notation: "United Brotherhood of Carpenters and Joiners of America, Minute Book of Local Union No. 550, Oakland, California," and [1010] ask you if you recognize that book.

A. Yes, that is our minute book, and that is the signature of the Secretary, Mr. Bennett.

Q. What office do you occupy in Local No. 550, Mr. O'Leary? A. Business Agent.

Q. Are you familiar with the contents of this book?

A. Other than I hear them read and listen to them; they all have to do with the business of the Local. I couldn't remember them word for word.

Q. But, generally, you are familiar with them?

A. Generally, I am; I should be.

Q. Generally, do you attend the meetings that are covered by these minutes?

(Testimony of Walter Q. O'Leary.)

A. I haven't missed a meeting, unless I was sick, and that has been two or three; that is about all.

Q. Now, directing your attention particularly to the minutes of August 5, 1938, I notice the following entry: "President Sholden appointed Brothers Irish, Ovenberg, O'Leary and Cincinnati to confer with Mr. Edwards, of the Wood Products, Incorporated, who was seeking admission to address our meeting. By motion, a recess of ten minutes was taken to allow the Benefit Committee to sell tickets," and so forth.

Now, do you recall the circumstances under which Mr. Edwards sought to address your meeting?

A. Yes. We were then locking horns over a change in working conditions. We at that time had a trade movement on, and Mr. Edwards wanted to get before our local and influence our members to vote his way. That was his idea, and the President denied him admission, and we went out in the hall and talked to him. He had a long letter at that particular time, and he wanted to read it to our members.

Q. When you say there was a trade movement on, and that you had locked horns, what do you mean by that?

A. Well, we were in favor of getting better conditions, and he was representing the mill owners, and was opposed to it. [1011]

Q. Now, specifically, when you say you wanted

(Testimony of Walter C. O'Leary.)

better conditions, what were the particular conditions that you were objecting to that existed at that time, and what were the particular conditions you wanted changed?.

A.. We have no objections to conditions we work under, but we strive to improve them, and that is what we were doing then.

Q. Now, Mr. O'Leary, you have not answered my question yet. What were the conditions you wanted improved?

A. Our wages and hours, and we at that time had an arbitration on, and he denied that Alameda County was a participant in the arbitration, and would not go with it; the arbitration award gave us \$9 a day, and we were on strike for a couple of weeks, and in some way we compromised for \$8.50, due to his efforts.

Q. Was there any discussion in the Union at that time, or with Mr. Edwards, regarding the so-called restrictive clause in the contract, which provided that millmen should only work on mill work that was locally processed? A. Not then, no.

Q. That did not enter into the situation at that time? A. No.

Q. Didn't the Millmen's Union over on that side of the bay go out on strike about that time?

A. We went on strike that fall, due to that trade movement. Just what the dates of the strike were, I couldn't say, but we were out for two weeks and two days, I think—twelve days, I think we were out.

(Testimony of Walter C. O'Leary.)

Q. Now, pursuing the contents of this meeting of August 5th, 1938, I see the following notation:

"Secretary Bennett gave an outline of the activities of the Conference Committee."

What is the Conference Committee?

A. Well, we have what we designate sometimes as a Metropolitan Area here, and we have a committee from Local 42 and 550—

Q. 42 is the Union on this side of the bay?

A. On this side of the bay, and there is often a delegation from 262 in San Jose up here. [1012]

Q. How about 162?

A. 162 is a carpenters' union in San Mateo County, and there are some millmen belong to that union, and I guess it is Simons, their business agent, sets in here, but there is a Millmen's Union—

Q. Where is Local 36 located?

A. In Oakland.

Q. That is what?

A. Carpenter's Union.

Q. Do they sit in on your Conference Committee?

A. No.

Q. They do not? Now, the Conference Committee, from the Union's standpoint, then, consists of representatives of 550 and 42?

A. 550 and 42, 262, of San Jose, and, recently, the local from Pittsburg sits in with us.

Q. What is the number of that?

A. I think that is 1956. I might be off there, but it is the Millmen's Union in Pittsburg, California.

(Testimony of Walter C. O'Leary.)

Q. Now, what about the District Council of Carpenters? Do they have a representative on that Conference Committee?

A. Nearly always, Dave Ryan will set in with us.

Q. Representing the District Council?

A. Representing the District Council. Sometimes he is not present, but nearly always he is.

Q. What about the General Office, the International Brotherhood? Do they have a representative that sits in on those meetings?

A. Since that affair in 1938, the settlement with them was that hereafter a representative of the General Office must sit in; to make the Six Counties set-up workable.

Q. And who sits in?

The Witness (Continuing) And the six counties is trying to make the wages the same in all counties — Joe Cambiano has set in.

Q. What is his official designation?

A. Organizer for the United Brotherhood of Carpenters and Joiners of America.

Q. Now, who sits in on behalf of the employers on that Conference Committee?

A. Not on that one; that is just our own Conference [1013] Committee. The one we set in with the employers on, we designate that the Negotiating Committee.

Q. So this Conference Committee is strictly a union set-up?

A. Strictly a union set-up, that cooks up the

(Testimony of Walter C. O'Leary.)

proposition on what we are going to demand, presents it back to the locals for their approval, who go to the employers for it.

Q. Does that Conference Committee keep minutes? A. Yes.

Q. Where are those minutes kept?

A. I have them.

Q. You have custody of them? If you were served with a subpoena by this Grand Jury to produce those minutes would you comply with it?

A. I would.

Q. Now, referring to the Negotiating Committee that you just mentioned, what does that consist of, Mr. O'Leary? A. Two from each local.

Q. Representing Union labor?

A. Yes. There are not always there two people from each local representing union labor.

Q. Mr. Ryan sit on that committee?

A. He does. He has been absent once or twice.

Q. Mr. Cambiano sit on that committee?

A. Always,—all but once; that was due to a mistake.

Q. Do you sit on that committee?

A. I do, in an advisory capacity.

Q. Who else sits on that committee on behalf of Local 550?

A. The original committeemen designated have not always been able to attend, due to some changes in the firm to which they belong, or where their services were hard to dispense with, and it changes

(Testimony of Walter C. O'Leary.)

from time to time. Originally, it was—I think it was E. H. Ovenberg and Jack Sholden on that original committee, then it changed lately here. The last committee was: Irish and Ovenberg, I think.

Q. Mr. Kelly sit on that committee?

A. Not now.

Q. Mr. Bennett sit on that committee?

A. He has at times, as an alternate. [1014]

Q. Do you recall whether Mr. Kelly has at times sat on that committee?

A. Originally, at that particular date, he was on it, yes, but they had a little political upset in 42 and he was taken off.

Q. Now, who sits on that committee in behalf of 42?

A. At present, it is William Wilcox and Lindley, with Charley Helbing, the business agent, sitting in in an advisory capacity, like myself. Lindley has been unable to get off from work, and Wilcox and Helbing have been there on this last negotiating committee.

Q. Who sits on the committee in behalf of the employer organization?

A. Beginning on our side of the bay, Wood Products is represented by D. N. Edwards, and on this side of the bay, Harry Gaetjen is the secretary of what is known as Secretary of Lumber Products, Incorporated. Jack Hart, of the Hart Mill & Lumber Company has sat in—these are the mill owners.

(Testimony of Walter C. O'Leary.)

Q. How about Mr. Ennes, of the Cabinet Manufacturers?

A. Those are the only mill owners that have been present that I can recollect, and for the Cabinet Manufacturers, Mr. Ennes.

Q. How about Mr. Pierce?

A. Pardon me. Mr. Pierce is sitting there, from Santa Clara County, who represents the Pacific Manufacturing Company, and Jack Pierson, representing the Redwood Manufacturing Company, of Pittsburg, California.

Q. But so far as San Francisco is concerned, Mr. Gaetjen represents the mill owners here, is that correct?

A. I would say yes. Mr. Hart has been there.

Q. And so far as the mill owners on the other side of the bay are concerned, Mr. D. N. Edwards represents them, is that correct?

A. That is correct.

Q. Does Cambiano sit in on the meetings of this Negotiating Committee? A. He does.

Q. Does the Negotiating Committee keep any minutes? [1015]

A. Ennes acts as secretary. Whether he keeps any minutes or not I don't know.

Q. Where does the Negotiating Committee usually meet?

A. The meetings of the recent negotiations have been held at—on 24th street, near Howard. It is on the left going out—I don't know whether it is east or west—I get turned around, in the City.

(Testimony of Walter C. O'Leary.)

Q. That is Mr. Gaetjen's office?

A. Mr. Gaetjen's office.

Q. The office of the Association?

A. Yes, sir; it is a store.

Q. Now, referring to the minutes of September 23, 1938, I notice the notation there that "The Building Trades Meeting of September 20th was reported on by Delegate Irish, stating the council had negotiated a stabilization agreement with employers for a period of two years, which is thought will be of great help to the building industry." Do you recall that meeting?

A. Yes, I recall the incident.

Q. Was that before or after you had gone out on strike on the other side of the bay?

A. I think it is right in—the dates tie in pretty close, there.

Q. Well, if the agreement—to refresh your memory—or maybe it will clear your recollection, if the agreement had been negotiated, and Mr. Irish reported the negotiation of the agreement, in all likelihood the strike was over, isn't that likely to be correct?

A. When that stabilization agreement was being drawn up, the efforts of the various crafts to better their conditions, which were then under way—it was presumed they would go through with it. In other words, I don't think that particular time that the stabilization agreement would block any particular craft, because I think it is written in there some-

(Testimony of Walter C. O'Leary.)

where that wages and hours are open at certain periods to negotiation. In other words, the conditions under which a craft works with the people who employ them, they have autonomy to make certain alterations there. [1016]

The Foreman: Q. In other words, it is not a blanket agreement, binding on every craft?

A. It is binding on certain incidents; in other words, they wanted to keep wages and hours stable for two years; it was an attempt to do that.

Mr. Clark: Q. Now, it says: "Building Trades meeting of September 20th was reported on by Delegate Irish." What is the Building Trades meeting of September 20th, if you recall?

A. There is a council that meets in Oakland, known as the Building and Construction Trades Council, of Alameda County, and they meet on Tuesday night.

Q. Who constitute the members of the Building and Construction Trades Council of Alameda County?

A. Well, when there is nobody jumping over the traces, it constitutes all the crafts employed in the building industry.

Q. When I say "Who constitute the members," does the President of each union attend as a member, or does the business agent attend as a member, or, generally who—

A. Delegates are elected from each union.

Q. To attend the meetings?

(Testimony of Walter C. O'Leary.)

A. Yes, they are elected from our local, anyway. I don't think they are appointed; I think they are all elected.

Q. I notice in this same meeting of September 23, 1938: "Brother Leidich, of the Label League, stated the magazines Time and Life were unfair to organized labor." What is the Label League?

A. That is the league in Alameda County that promotes the sale of goods and articles that bear the Union Label, designating they have been made under fair working conditions.

Q. Who constitute the membership of the Label League?

A. Various organizations that of their own volition are willing to send a delegate there to become a member of that league; they do not all belong to it.

Q. Does Local 550 have a delegate on the Label League? [1017]

A. We have.

Q. And have had for sometime past?

A. Yes.

Q. And could you describe with some greater degree of exactitude just what the Label League does, what its function is in connection with the industry, particularly mill work?

A. Well, they have very little to do with mill work that I know of. They promote labels generally. They meet—I don't know just what night they meet. They have recently rented quarters for label exhibits over there, to promote and exhibit

(Testimony of Walter C. O'Leary.)

goods, like shirts, ties, tobacco, and that I know of, we have never had any exhibit with them.

Q. Now, your contract with the employers calls for the use of the Union Label, does it not?

A. Yes, it does.

Q. Now, is the Label League that is mentioned in the minutes of this meeting—is that organization used to enforce the provisions of the contract with—your contract with the employers with regard to the use of the label? A. It is not.

Q. Do you sit as a representative of 550 in any meetings of the Label League?

A. I have not.

Q. Now, referring to the minutes of October 7th, I notice the following entry: "Brother Irish, Chairman of the Observers Committee says he needs more men with cars to follow trucks"—

The Witness: What date was that?

Mr. Clark: That is October 7th.

The Witness: That is when we were on strike, in October.

Mr. Clark: Q. Now, what is the Observers Committee, or what was the Observers Committee?

A. The Observers Committee was the one who checked stuff leaving from the mills out of which we had struck, the mills in which the strike was existing.—

Q. Do you presently have an Observers Committee?

A. No. (Continuing)—to make it known to

(Testimony of Walter C. O'Leary.)

the Carpenters that that stuff came from the mill that was on strike. [1018]

Q. "Brother Irish says he needs more men with cars to follow trucks" — Would you amplify that entry?

A. In other words, there were some trucks leaving mills that did not have a car to go along with them and tell the carpenters this stuff came from a struck mill.

Q. In other words, on mills that were struck, you kept a car nearby, with some delegates of your union in it, is that correct? A. Correct.

Q. And when the truck left the mill, that car followed the truck to its destination on the job?

A. If they were there, they would do that, yes.

Q. And when the truck arrived at the job, someone from that car that was following would inform the carpenters that the mill work came from a struck mill, is that correct? A. Yes.

Q. Referring to the minutes of October 21, 1938, the following excerpt appears: "Organizer Cambi-
ane stated he wished a complete report on all shops in this district. He also reported the P. M. Company"—that is the Pacific Manufacturing Company? A. Yes.

Q. "ready to sign our new agreement, and that Local 262 to have a special meeting Monday, October 24th to approve it, and that Local 1956, of Pittsburg, would hold a special meeting Thursday, October 27 also to approve the same agreement with

(Testimony of Walter C. O'Leary.)

the Redwood Manufacturing Company and after that he would call a Joint Committee meeting with the Six Counties, namely, Santa Clara, San Mateo, San Francisco, Marin, Alameda and Contra Costa. Brother Kelly, of Local 42, was called and stated we all had lots of work ahead to keep all counties in line. Brother Irish reported for the Conference Committee, stating General President Hutchison was present. The Committee was well pleased to meet him. He discussed our situation with us and answered many questions"—Now, can you amplify this statement that "We all had lots of work ahead to keep all counties in line." Would you indicate what [1019] the significance of that entry is?

A. Well, from the remarks of Cambiano, what was said—that is just about when we were settling up on the \$8.50 compromise. Brother Kelly worked hard on the arbitration, and got a dollar a day increase through the arbitrator, and was very much disappointed at the way things were going then, and he probably still had hopes of getting the dollar.

Q. What is the significance of that phrase, "to keep all counties in line"? Do you recall?

A. To keep the ranks from breaking and going back to work, I guess, or keeping still the demand for that dollar.

Q. Do you remember Mr. William Hutchison, General President of the order being present at that meeting?

(Testimony of Walter C. O'Leary.)

A. He was not at any of our meetings. We met him in the office of the District Council of Carpenters one Saturday morning when we were having a Conference Committee meeting, and he stepped in and we shook hands with him and had a little blah-blah there, and that is about all that amounted to.

Q. "Brother Irish reported for the Conference Committee, stating General President Hutchison was present. The Committee was well pleased to meet him. He discussed our situation with us and answered many questions."— That was not at the general meeting of Local 550?

A. No, it was at the Conference Committee meeting at the District Council office, and he stepped in for a few moments there before we met, and then left.

Q. And you were a member of that Conference Committee? A. I was.

Q. And you were present when Mr. Hutchison was there? A. Yes.

Q. What was the nature of the conversations or remarks that were made at that time by Mr. Hutchison?

A. Oh, they were general; I couldn't tell you just what they were, probably wishing us well, and hoping we would increase our wages, I guess, and cut our hours, and get better conditions; I guess that is about what it amounted to. [1020]

Q. Was that the only time during this period

(Testimony of Walter C. O'Leary.)

that you met Mr. Hutchison, or did you meet him on other occasions?

A. That is the only time I met him, and that our Committee met him that I know of.

Q. To the best of your recollection, was any discussion had at that time, or at any other time you know of, with Mr. Hutchison, regarding the so-called restrictive clause in the contract?

A. I don't know of any.

Q. To the best of your recollection, you never heard it mentioned? A. No.

Q. Now, referring to the minutes of December 2, 1938, I notice the following entry: "Business Agent O'Leary reported on the Conference Committee meeting held Saturday, November 26th. Secretary Ryan"—that is David Ryan, of the District Council of Carpenters? A. Yes.

Q. "to arrange a meeting with the employers. Such a meeting was held Thursday, December 1st for the purpose of establishing a uniform agreement in this District." Do you recall that meeting with the employers?

A. I can't recall the date, or just that particular meeting, but no doubt I was there.

Q. Do you remember what transpired?

A. From the wording there I would say we were closing up our agreement. It takes some time to get those fellows signed up; they were hemming and hawing, and this Edwards, of Oakland, was the backiest of the lot. He caused a hell of a lot of trouble.

(Testimony of Walter C. O'Leary)

Q. That mentions a uniform agreement in this district. What is included in the phrase "this district?"

A. That would be the six counties, in this case.

Q. Would you name them?

A. Yes, Marin County, San Francisco County, San Mateo County, Santa Clara County, Alameda County and Contra Costa County.

Q. And when that agreement was finally negotiated for the six [1021] counties, was it a uniform agreement?

A. Yes. There was a couple of spots, we found out later, where there was a difference, but we all thought surer than hell it was identical then, but there was a slight difference in one or two places. It was practically a uniform agreement.

Q. Now, when you say there was a slight difference in one or two places, do I understand that that was with regard to wages or hours?

A. Yes, wages, that is all.

Q. Where does that slight difference exist, if you can recall?

A. It occurred in Pittsburg. We didn't know it then, but it occurred in their sash and door department.

Q. That is the Redwood Manufacturing Company?

A. Yes, and a couple of men in their frame department, and in Santa Clara County there was a difference in the sash and door department scale;

(Testimony of Walter C. O'Leary.)

that is, mentioning time and scale, but actually, on the payroll, they were doing just as well as they were here.

Q. Now, referring to the minutes of December 9, 1938, I notice the following entry: "Business Agent O'Leary gave his weekly report stating the Marcus Hardware Store"—where is the Marcus Hardware Store?

A. Seventh and Washington in Oakland.

Q. (Continuing) "were handling non-union ironing boards from Los Angeles. The Building Trades to insist they go back to Los Angeles." Do you recall the circumstances surrounding that entry? A. Yes, I do.

Q. Would you state them to the Grand Jury?

A. Well, they were handling non-union ironing boards there from Los Angeles, and we have a couple of firms over there that make ironing boards in large quantities, and they can't get men to work as cheap here as they can get them to work in Los Angeles, and they can't sell ironing boards outside of Oakland to any great extent if those cheap Los Angeles boards are allowed to come in here, and we at least used our efforts to prevent the merchandising of that [1022] article in Oakland.

Q. Those were non-union made ironing boards?

A. Yes, made in Los Angeles.

Q. Now, referring to the minutes of December 16th, 1938:

"Brothers Ryan, Cambiano, and O'Leary held a

(Testimony of Walter C. O'Leary.)

conference with Mr. Cox, of the Peerless Fixture Company"—where is the Peerless Fixture Company?

A. I can give you the exact address—it is in Oakland——

Q. Well——

A. Wait a minute, it may be—yes, it is Oakland—it is right close to the Oakland line—no, I will tell you—it is in Berkeley. It is on San Pablo Avenue, and the streets come together there—that is Peerless, you said? Yes, they are in Berkeley, 2608 San Pablo Avenue, Berkeley.

Q. (Continuing) "held a conference with Mr. Cox, of the Peerless Fixture Company on ironing boards and medicine cabinets report accepted." Do you recall the circumstances surrounding the incident mentioned in that excerpt from the minutes?

A. Yes, they wanted some special concessions to meet this cheap Los Angeles competition in ironing boards, and medicine lockers.

Q. And you met with them? A. We did.

Q. What was the result of that meeting?

A. We didn't grant them any concessions.

Q. Do you know what became of the ironing boards? A. What ironing boards?

Q. About which you conferred?

A. They sell them.

Q. They continued to sell them?

A. Oh, yes. They were not handling Los Angeles ironing boards; they make their own.

(Testimony of Walter E. O'Leary.)

Q. What was the nature of the concessions they wanted?

A. They wanted some cheaper wages to meet the Los Angeles wages.

Q. I see. I notice here reference to the State Mill Committee. What is the State Mill Committee, Mr. O'Leary?

A. That is an unofficial body composed of as many delegates as [1023] we can get to assemble from time to time, mostly in the northern part of the State; we meet to try to get uniform conditions in all the mills over the State, particularly Los Angeles.

Q. The members of that committee are all union labor? A. All.

Q. Mr. O'Leary, have you ever heard of the Northern California Lumber Dealers Association, or the California Lumber Merchants Association, Northern Division? A. No, I have not.

Q. You are not familiar with that organization?

A. No. There is a Cabinet Manufacturers Association or something, Northern Division; I have heard that mentioned but not lumber men.

Q. Now, referring to the minutes of January 13, 1939, I notice that it states, "Business Agent O'Leary reported checking over the sidings and freight sheds and mills during the week and not finding any hot mill work." Do you recall the circumstances surrounding your activities as mentioned in this excerpt from the minutes?

(Testimony of Walter C. O'Leary.)

A. Yes.

Q. Would you state them to the Grand Jury?

A. Well, every once in a while somebody will break out with a rash over there that there is a hell of a lot of non-union mill work coming in from the North—

Q. That is, from Washington and Oregon?

A. Yes, I guess they don't come in from British Columbia, and they want to know what the hell the business agent is doing,—“How are we going to live and work here if that cheap work comes in?” And naturally enough, they want me to go out and check on it.

Q. When you go out and check, what do you do?

A. Go around to all of the sidings and look them over, and see if there is any cars setting on them, and see what is in them.

Q. If you find that there is any so-called “hot mill work” in any cars on any of these sidings, what do you do then?

A. Go to the employer, or the man that is purchasing them and try to get him to use local made mill work. Now, in using the words “mill work” it has to do with moldings—there was a [1024] time when all surfaced material used to bear the label, and the carpenters would not handle it unless it did. At present, why, four-side stuff can come in; we don't bother about it, but if there is moldings comes in, we object to it.

The Foreman: Q. Does molding include patterned—

(Testimony of Walter C. O'Leary.)

A. Yes, run to pattern.

Mr. Clark: Q. Now, I notice this entry says, "hot mill work." What is "hot mill work"?

A. No stamp on it.

Q. As a matter of fact, Mr. O'Leary, whether it has a stamp or not, if it comes from outside this area, you object to it, do you not?

A. Yes, we object to it if it is made at a lesser rate than ours, lesser scale.

Q. Whether it has a stamp on it or not?

A. Yes, we object to it, but our objections are overruled when there is a stamp on it; it goes just the same.

Q. Who overrules your objection?

A. General President Hutchison.

Q. Under what circumstances did he overrule your objection? Have you a letter from him, or anything of that kind?

A. Personal. We had in our old trade rules a paragraph wherein the building trades would not handle material made at a lesser rate than was paid here, and that was in force up until 1921.

Q. You had that in your agreement of 1938?

A. And some three or four years ago, when General President Hutchison was out here, we went up to his apartment and had a session with him, and he very definitely informed us that where that label appeared, it was just like a \$5 bill, it had to be honored; now, that was a different stand from what they took years before; that is the stand

(Testimony of Walter C. O'Leary.)

right now; if it has got the label on, it has to be used—or, they use it.

Q. Now, when you say three or four years ago, when President Hutchison was here, that was not the trip that is mentioned—

A. No, no.

[1025]

Q. That was previous to that?

A. Oh, yes.

Q. Now, where was President Hutchison staying? You say you went to his apartment.

A. There was a hotel strike here then. He generally stays at the St. Francis; but there was a hotel strike here then. It was an apartment house—I couldn't tell you where it was.

Q. You were present at this meeting?

A. I was.

Q. Who else was present?

A. I think Kelly and Ovenberg and I.

Q. How about Ryan, was he?

A. I think Ryan was there, yes.

Q. What about Cambiano?

A. I don't think he was there. In fact, I would say definitely no, he was not.

Q. Now, will you state again just what Mr. Hutchison's conversation was with your committee that met him at that time?

A. Well, we looked upon that condition and the enforcement of it as being responsible for the fact that we had the best conditions in mills in the United States right here, and we were very, very

(Testimony of Walter C. O'Leary.)

desirous of having that particular section in our trade rules continued in enforcement, and we went to take that matter up with him, and he said, "No, if it has got the label on it, the carpenter has to honor it."

Q. And since that time, have you honored that union label? A. Yes.

Q. Am I correct, then, that since that time you have made no efforts, yourself, Mr. O'Leary, to keep out from this area so-called "hot cargo" that comes in from the Northwest and has the Union Label on it?

A. It has cooled down when it has got the label on it; it is not hot.

Q. You have never attempted to stop any—

A. No.

Q. Do you recall whether this last meeting that you have mentioned with Mr. Hutchison was prior to 1936 or subsequent to 1936?

A. Just about then, I think—'35 or '36.

Q. Well, you say there was a hotel strike on?

A. That would give you the key to the situation; I couldn't tell you just what year. [1026]

Q. That was the big hotel strike that was on?

A. Yes.

Q. It has been called to my attention that the hotel strike here was in 1938, so that would be two years ago, rather than four years?

A. Oh, it was before that, unless my time is slower than I think it is. There might have been another hotel strike.

(Testimony of Walter C. O'Leary.)

Q. Were there any minutes or records kept of your meetings with Mr. Hutchison at that time?

A. No, just an informal meeting with him there. We went over to see him; that is all.

Q. Now, referring to the minutes of January 20, 1939: "Business Agent O'Leary reported he was still checking all shops, mills and sidings for unfair mill work. Report accepted." Was that a continuation of your activities as described in the previous meeting? A. Exactly.

Q. And again, I want to ask you as to whether or not when you found the Union Label in 1939 on a cargo of mill work from out of the State; whether or not you made any attempt to check the delivery, or obstruct the delivery of that mill work?

A. No.

Q. None, whatsoever?

A. No. I would go to the purchaser of it and try to induce him to buy local made material.

Q. Never put any pickets on a car?

A. No.

Q. During 1939?

A. Not I—it would not be on labeled mill work, if I did.

A Juror: May I ask a question at this time?

Mr. Clark: Certainly.

The Juror: Q. Mr. O'Leary, assuming that you had some men working out at—or, ready to go to work at a building, and a truck load of material left, we will say, the car, or the factory, or the shop,

(Testimony of Walter C. O'Leary.)

and it arrived at the store without any stamp or label on it. Would the men—would these union men that were ready to go to work with this material, handle it?

A. If it came from a union shop, yes. [1027]

Q. Without a label or stamp?

A. They would get in touch with me, and we would kick up a little fuss around there—those mill men are too damned lazy to look after their own conditions, and then they all expect you to do something—

The Juror: Q. We will just forget that part of it. We will say it left there—and it probably might be, as you say, "hot cargo." In other words, it did not have the stamp or label on it, but it arrived at its destination, ready to be fitted into the job, whatever was necessary. These men that are there, are waiting for it. Now, it arrives. Would they handle it?

A. If they knew it was hot?

Q. I am not saying anything about its being hot. It has no stamp or label on it.

A. They would get in touch with me, if they were doing their duty as union men, to find out if it was O. K.

Q. What would you do?

A. Find out what mill it came from.

Q. Then what?

A. And if it was a union mill, I would tell them, "Okey doke, go ahead," and we will have the men

(Testimony of Walter C. O'Leary.)

go ahead and stamp it, or get around it the easiest way possible. We are supposed to send it back to the mill and make the mill owner haul it back and see that it is stamped, but we have got to use a little common sense, and if everything is union, why get nasty about it?

Mr. Clark: Q. Now, referring to the minutes of June 24, 1938—this is going back a little—I see there is an entry there that \$53 was appropriated “B. T. C.,” that is Building Trades Council, is it not? A. Yes.

Q. “for special investigator.” Do you recall what that money was appropriated for?

A. I couldn't remember that, no.

Q. Is it customary for the Building Trades Council to do any investigating for your organization? A. They evidently did then. [1028]

Q. Do you recall the nature of that investigation? A. No, I don't, right now.

Q. Do you recall whether or not you had any part in it? A. I do not.

Q. Now, in the minutes of September 15, 1939, the following entry appears: “President Irish reminded our Conference Committee to attend the joint meeting to be held in Oakland, September 16 at 12 o'clock noon.” What was that joint meeting? Do you recall what it was? That is last September:

A. We were probably getting ready to notify the mill owners that we desired a change in the present agreement; that is about what it was, and

(Testimony of Walter C. O'Leary)

we met in Oakland that particular time. We generally meet in San Francisco.

Q. It refers to "Joint Meeting," that would be the meeting of 42 and 550? A. Yes.

Q. And possibly 162?

A. And 1956, yes.

Q. And possibly 262?

A. Yes, with 262 and 1956; not 162.

Q. Do you recall attending that meeting, or what transpired there, if you did attend?

A. I don't know; if I am on the list, I must have been there.

Q. This was last September.

A. I would say I was there.

Q. Do you recall what transpired at that meeting?

A. No, I don't, just exactly what transpired.

Q. But you think it was concerned with the—

A. Yes, getting ready to take on the mill owners for improved conditions.

Q. As a matter of fact, you are at present negotiating, are you not, with the mill owners?

A. We are, yes.

Q. Those negotiations are being carried on by your Conference Committee, is that correct?

A. Negotiating Committee.

Q. By your Negotiating Committee. In the course of those negotiations with the employer organizations, has there been any discussion with regard to the restrictive clauses in the contracts? [1029]

(Testimony of Walter C. O'Leary.)

A. When you say "restrictive clauses" you mean the restriction in the use of certain kinds of mill work, whether it be union, non-union, or—

Q. More particularly, the restriction with regard to the permission—or, with regard to the exclusion of mill work that is patterned outside of the six counties.

A. No, I don't think there is anything in it other than the general union condition that we want to prevail.

Q. Well, I asked you if there has been any discussion. Has it been mentioned?

A. Well, now, whether it was mentioned at their meetings, or not, I don't know. I don't think so.

Q. Well, you have been perfectly frank here and stated that the unions did not want it to come in.

A. No, we don't.

Q. And is that still the expression of the unions' attitude on it?

A. Oh, yes.

Q. Now, in these negotiations looking toward the signing of a new contract, what has been the employer organization's attitude with regard to those particular clauses? Do they want them in the agreement or out of the agreement?

A. They leave that to us. When it is mentioned, "That is up to you fellows, if you want to continue the wages you have got here, you have got to do it yourself. We aren't doing that." That is their answer to us on that.

Mr. Clark: I see. Unless there is some member

(Testimony of Walter C. O'Leary.)
of the Grand Jury who has some question to ask.
Mr. O'Leary, I think we can excuse him.

The Foreman: Is there a question, gentlemen?
You are excused, subject to notice and request?

Mr. Clark: Subject to notice.

The Foreman: Would it be agreeable to you, Mr. O'Leary, to be excused now subject to notice, reasonable notice, to return under the same subpoena? [1030]

The Witness: Yes, sir.

The Foreman: Then you are excused pending such notice.

(The witness was excused and retired from the room.)

From the Reporter's transcript of the Grand Jury which returned the indictment, showing proceedings taken on Monday, May 13, 1940, ten o'clock A. M., relative to the defendant Charles Helbing:

CHARLES HELBING

called as a witness.

The Foreman: Be sworn, Mr. Helbing. You will solemnly swear that you will keep secret the testimony you are about to give, before this Grand Jury, and that you will testify to the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Helbing: I do.

(Testimony of Charles Helbing.)

The Foreman: Be seated.

Mr. Clark: Q. What is your full name, Mr. Helbing? A. Charles Helbing.

Q. What position do you occupy with reference to Local 550 of the United Brotherhood of Carpenters and Joiners?

A. I don't belong to 550,—42.

Q. You are connected with 42? A. Yes.

Q. What position do you occupy with regard to 42? A. Business representative.

Q. How long have you been business representative?

A. Well, this is—I was 1935, from '34—'33 to '36, and then from '39 until now.

Q. Now, Mr. Helbing, I hand you here Government's Exhibit No. 279, and ask you to look at the last page and answer whether or not [1031] that is your signature?

A. Yes, that is my signature.

Q. Will you state what that agreement is, or what that document is?

A. That is an agreement with the shops and mills in this locality.

Q. Is that agreement presently in full force and effect; in other words, is that your present agreement? A. Yes.

Q. Will you state the circumstances under which your signature came to be affixed to that document?

A. As a negotiating committee, and as one of the negotiators negotiating this agreement.

(Testimony of Charles Helbing.)

Q. You were on the Negotiating Committee for Local 42, is that correct? A. Yes.

Q. Were you also on the Negotiating Committee for Local 550?

A. Well, 550 and this is the same, I think; 550, I think, has—let me see that.

Q. Well, this agreement is signed by 550, is it not?

A. Yes. They have—you see, the Association and all of them get together and try to consummate an agreement, see?

Q. Will you state who were the members of the Negotiating Committee, how it was chosen, for instance, and who represented the unions and who represented the employers?

A. This agreement—we have a committee, I think of six, and these were chosen as representatives as to final negotiation. Then we have a committee in the organization that tries to formulate a set-up in demanding conditions, you know. Then after those organizations have chosen that then this committee is appointed to try to carry that through.

Q. Well, your name appears as representing No. 42, Charles Helbing. That is correct?

A. Yes.

Q. R. H. Miller. Who is R. H. Miller?

A. He is one of the Committee, one of the Negotiating Committee.

Q. On behalf of Local 42? A. Yes.

Q. Who is W. L. Wilcox?

(Testimony of Charles Helbing)

A. He is the Secretary.

Q. Who is Mr. ~~C. W.~~ Irish?

A. He is a representative from 550. [1032]

Q. Who is Mr. W. C. O'Leary, whose name appears here?

A. He is a representative from 550.

Q. I notice Mr. J. F. Cambiano's name appears here. Who is he?

A. He is the representative from the general office.

Q. When you say the "general office," do you mean the International Brotherhood?

A. Yes, of carpenters.

Q. Of which Mr. Hutchison is the President?

A. Yes.

Q. I notice the Bay Counties District Council of Carpenters is signed here by Mr. D. H. Ryan. What is their connection with Local 550 and Local 42?

A. We have a District Council of Carpenters that takes in the bay area of all the carpenters, San Mateo, San Francisco, Alameda and Marin, and Mr. Ryan is Secretary of the Carpenters' organization, of the District Council of Carpenters.

Q. Are the Carpenters in San Mateo County included? A. Yes.

Q. Do you know the number of that local in San Mateo County? A. 162.

Q. Are you sure it is 162, and not 262?

A. No; 262 is in Santa Clara County.

(Testimony of Charles Helbing.)

Q. 162 is in San Mateo County? A. Yes.

Q. Did Mr. Cambiano sit in on these negotiations? A. Yes.

Q. If you will think back now and recall these negotiations, were several meetings had, or one meeting?

A. Oh, it takes several meetings to carry that through, you know, because we don't always agree; you know how those things are. They thresh backward and forward.

Q. To the best of your recollection were you present at all of the meetings?

A. Well, I could say yes, I mean a general answer to that would be "Yes".

Q. Was Mr. Miller present, to the best of your recollection—Mr. R. H. Miller?

A. He might have been absent at some particular times? I couldn't just exactly say he was there all the time. [1033]

Q. How about Mr. W. L. Wilcox?

A. The same thing. I couldn't verify whether he was there at that meeting.

Q. But your recollection is that, generally, he was present? A. Yes, generally.

Q. How about Mr. Irish?

A. Well, it would be about the same answer to that.

Q. What about Mr. O'Leary?

A. That is the same answer.

Q. Now, to the best of your recollection was Mr. Cambiano present at all of the meetings?

(Testimony of Charles Helbing.)

A. No, I don't think he was present at all of them; I couldn't say for sure.

Q. Was he present at some of them?

A. Yes.

Q. Would you say he was present at a majority of the meetings?

A. Well, I couldn't safely say whether he was at a majority, but he was there very often.

Q. What about Mr. Ryan?

A. About the same answer; sometimes Ryan would have business otherwise, you know.

Q. When these meetings met did you do anything in the nature of appointing a temporary chairman, or anything of that nature? Who presided?

A. I think Cambiano presided on some of those meetings.

Q. You think Cambiano presided?

A. On some of them, and then there was another time there where others presided; he wasn't always there, you know.

Q. But you have a definite recollection that Mr. Cambiano presided at some of them?

A. Yes.

Q. After you had generally agreed on the terms of these agreements, what was the next step with regard to their execution?

A. Well, wages and so on and so forth were agreed to.

Q. I mean with regard to the actual signing of

(Testimony of Charles Helbing.)

the agreements. Did these have to be sent on to the general office in Indianapolis for approval?

A. Oh, yes.

Q. How were they sent; were they mailed on?

A. Yes, they would be mailed. [1034]

Q. According to your understanding, who was it who approved these agreements?

A. When these agreements came up the organizations endorsed them. Then they go through the District Council for endorsement, and then they are sent to the general office.

Q. There is nothing on here that indicates any—no signature on this document to indicate any approval by the general office. You say they were mailed to the general office at Indianapolis?

A. Well, they might be approved where these particular documents were not sent; there might have been a copy sent.

Q. A copy may have been sent? A. Yes.

Q. But it is a regular course of business, is it not, to send either the original or the copy to the general office for approval? A. Yes.

Q. To the best of your recollection, who approved them in the General Office?

A. Why, I guess, the General President.

Q. That is Mr. Hutchison?

A. I don't know just exactly which one approved that; might have been somebody acting in his place. I couldn't recall that, you know, because they have, the General President isn't always there.

(Testimony of Charles Helbing.)

Sometimes it is by the Vice-, or so on and so forth, who approves it. Now, this signature, or that approval, I couldn't give you any real definite answer on that.

Q. Your only answer to that is they are sent to the general office in Indianapolis and someone approved it? A. Yes.

Q. In the normal course of business that would be by Mr. Hutchison, or someone acting in his place and stead?

A. That would be it, yes.

Q. Well, now, I will ask—

A. That would be Mr. Hutchison or somebody acting in his stead.

Q. Now, when they are returned to Local 42, is the copy approved by someone in the general office?

A. As I stated before, it first comes before the Local, then to the District Council, then to the [1035] General Office. Then it is a record as it stands.

Q. Well, now, so the Grand Jury will get this clearly before them, these agreements are signed by the representatives of Local 42, is that correct?

A. That is correct, yes.

Q. And also by the representatives of Local 550, is that correct? A. Yes, that is correct.

Q. And by the Bay Counties District Council of Carpenters, is that correct?

A. That is correct.

Q. And by Cambiano, as the International representative? A. That is correct.

(Testimony of Charles Helbing.)

Q. And by the employer organizations you negotiated with?

A. Yes.

Q. Then a copy, either the original or a copy is sent on to the general office, is that correct?

A. Yes.

Q. Do you send a letter of transmittal with that copy or the original that is sent on to the general office?

A. Well, that I don't know. The Secretary of the District Council could answer that question better than I could.

Q. Well, I asked you that because in response to the subpoena we asked for all those records and correspondence, and there was no copy or original of a letter of transmittal presented to the Grand Jury. Would you be able to explain the absence of such a letter of transmittal?

A. Well, the local doesn't get that. The District Council gets that.

Q. Well, there was no such letter or copy of a letter presented on behalf of the District Council to the Grand Jury. Would you have any explanation for the absence—

A. Well, it might be the approval of the representative from the General Office that meets with us, see?

Q. In other words, Mr. Cambiano's approval would suffice for the General Office?

A. He might have the approval.

Q. Now, following that line of questioning up, Mr. Helbing, there [1036] was no letter presented on

(Testimony of Charles Helbing.)

behalf of Local 550, Local 42, or the Bay Counties District Council of Carpenters which indicated that the copy or the original of this document had been returned. Could you explain the absence of any such letter? A. No, I couldn't.

Q. To the best of your knowledge a thorough search was made of the files of Local 42 to get all the correspondence that would be responsive to the subpoena? A. Yes.

Q. And you have no way of accounting for the absence of a letter?

A. No, I haven't.

The Foreman: May I ask a question, Mr. Helbing: The agreement forwarded to the General Office in Indianapolis would be forwarded by your Union or by the District Council of Carpenters?

A. By the District Council.

Mr. Clark: Q. This method of negotiating agreements and the approval by the general office applies to the other wages and hours agreement that you negotiated, for instance, with the Commercial Store Front and Fixture Institute; is that correct?

A. Yes.

Q. And it also applies to the type of contracts negotiated with the employer-employee organizations across the bay; is that correct?

A. Yes.

Q. Now, I hand you a document entitled "Journal" and ask you if you can identify it.

A. I can identify it, yes.

(Testimony of Charles Helbing.)

Q. To the best of your knowledge would you state what that book that I just handed you is?

A. Well, that is from the Treasurer, I suppose.

Q. If I suggested to you that that is the record of receipts and disbursements of Local 42, cash receipts and disbursements of Local 42, would you say that that is a correct statement of the nature of that book that I have handed you?

A. Well, that I couldn't say, because I don't keep these books. [1037]

Q. Well, what I have in mind is, from your general knowledge of the management of Local 42's affairs, would you say that that is the record of cash receipts and disbursements?

A. Yes, from my general knowledge, yes.

A Juror: It is hard to hear you, Mr. Helbing, over here. Will you speak a little louder, please?

The Witness: Yes, I will.

Mr. Clark: Q. Directing your attention to page 54, under the date of December 7, 1937, under the title of "Receipts" is "December 14, For dues and application fees, 206.25." Would you state, how much are your individual dues?

A. Individual dues are \$2.

Q. \$2 a month? A. Yes.

Q. How much are your application fees?

A. That varies. A man below 50 is \$50 at the present time. Above 50, between 50 and 60, is \$25, and above 60 is \$10.

(Testimony of Charles Helbing.)

Q. Now, directing your particular attention to the next entry, "Refund from State Mill Committee, 520.57." To the best of your knowledge, what does that entry represent?

A. What is that?

Q. "Refund from State Mill Committee, 520.57." A. I don't know.

Q. Have you ever heard of the State Mill Committee? A. Yes.

Q. What is the State Mill Committee, to the best of your knowledge?

A. I believe that is not down there correct.

Q. Well, to the best of your knowledge what is the State Mill Committee?

A. State Mill Committee is a voluntary organization that assembles and they bring up questions pertaining to the industry.

Q. Who are its members?

A. Well, I couldn't tell off-hand.

Q. Well, I mean generally, are they union men or are they employers? A. Union men.

Q. It is a Union organization? A. Yes.

Q. No employers involved? A. No.

Q. Now, under the date of June 21st, 1938, here is another item on page [1038] 78: "From State Mill Committee, 116.57." Would your same explanation apply to that?

A. Well, what is that there, expenditure for what?

Q. It is a receipt.

(Testimony of Charles Helbing.)

A. No, there was never anything collected from that, there. Those things, they are not down in the proper form, in my estimation.

Q. Well, would you explain to the Grand Jury what would be the proper form for putting those entries there?

A. Well, I couldn't say that, because this, this here—I don't propose to give any testimony outside—of course, I could carry on a general explanation, but so far as getting stuff here, here in pursuant to the direction of subpoena, which states that an inquiry is being made as to alleged offenses against the Anti-Trust Laws of the United States, and I am advised that claim is or may be made that I may, I am or may be involved in the commission of said alleged offense, and I assert the rights guaranteed to me by the Constitution of the United States not to be compelled in a criminal section to be a witness against myself. I am advised by counsel that under the statute of the United States I can be denied my rights under this constitutional guarantee unless if I am offered immunity from prosecution for or on account of my transactions or matters or things concerning which I may testify or produce evidence. I therefore choose to stand upon my aforesaid constitutional right unless I am informed on the record that the United States elects to offer me immunity as aforesaid.

Mr. Clark: In other words, you refuse to testify any further; is that correct?

A. Yes.

(Testimony of Charles Helbing.)

Mr. Clark: Now, for the record, Mr. Reporter, will you make it clear that the Government specifically denies any intention at this time to grant Mr. Helbing immunity by virtue of his examination herewith with reference to certain documents produced by Local 42 of the United Brotherhood of Carpenters and Joiners. [1039]

The Foreman: Mr. Helbing, you may be excused temporarily, if you will be good enough to wait for us in the ante-room.

The Witness: Yes.

(The witness was excused and retired from the room.)

From the Grand Jury proceedings of Friday,
May 17, 1940:

CHARLES HELBING

called as a witness; sworn by the Foreman.

Mr. Tom Clark: Q: Will you give the reporter your name, please?

A. Charles Helbing.

Q: You are the business agent of Millmen's Union No. 42? A. Yes, sir.

Q: These are the minutes that were brought before the Grand Jury. Are you familiar with these minutes?

A. Well, I couldn't say—I don't write them, you know.

Q: You attend the meetings? A. I do.

Q: You, then, are more or less familiar with

(Testimony of Charles Helbing.)

what goes on in the meeting as reflected through the minutes?

A. I am, I suppose.

Q. We just have a few questions we want to ask you to clarify some of the things recorded in the minutes. Referring to the meeting of October the 5th, 1937—we know that these dates, of course, are several years ago, and you can't remember exactly what went on, but if you will use the best recollection you have and try to explain some of the things that are recorded here, we would appreciate it. On that date it is recorded in the minutes: "Reports of delegates of B. T. C. and D. C. of C. received and approved." That is Building Trades Council and the District Council of Carpenters, those initials? A. Yes.

Q. What is the procedure with reference to reports of that kind? Does your Union have a report from the Building Trades Council of every meeting that the Building Trades Council has? [1040] A. They do.

Q. Are you the custodian of the records or reports?

A. No, the Secretary keeps that.

Q. I mean, of the Building Trades Council.

A. No.

Q. Your union keeps those records, though, do they?

A. They do—I assume they do.

Q. Then, does the Union pass upon those

(Testimony of Charles Helbing.)

minutes or just—all through your minutes, here, I notice it says, "Minutes concurred in" of the Building Trades Council. Does that mean that the union passes on the correctness of the Building Trades Council minutes as submitted? Or, what does it mean?

A. They concur in the minutes, yes; they coincide, they concur.

Q. They concur in the minutes of the Building Trades Council? A. Yes.

Q. You have a man that goes to the Building Trades Council for that purpose?

A. Yes, sir, we have a delegation of, I think, six or seven—I think seven.

Q. Your one union does, your local?

A. Yes.

Q. Reading the next sentence, "Nicolai Door Company removed from the 'unfair list'."

A. Well, the unfair list is a concern that perhaps went against the—handled material that was not fair to us—that is not fair in our operations.

Q. What do you mean by "material that is not fair to Local 42?"

A. Well, non-union material—was not manufactured under union conditions.

Q. Do you include any other material besides non-union? A. No.

Q. Do you include any material that is manufactured under working conditions which pay less than the Local 42?

(Testimony of Charles Helbing.)

A. If it has got the stamp, and made under union conditions, yes.

Q. It is on the fair list?

A. Yes, they are fair; we consider them fair. [1041]

Q. Even though the wages are lower than the wages of 42?

A. Yes, as long as they carry the stamp and carry the working conditions of the locality, why, we go along with them.

Q. You mean by that, that the stuff that comes in from the North, from union mills, as reported in these records, here, would be on the fair list if it had the union stamp on it? A. Yes.

Q. Regardless of the wages?

A. The carpenters will install anything if it has got the stamp. No way of stopping it.

Q. I am talking about Local 42, as reflected in your minutes, here. I don't mean the Carpenters' unfair list, I mean Local 42's unfair list.

A. Well, when it is considered fair, as I say, it is fair—employs union men, and has union material.

Q. It doesn't matter whether the wages are lower or higher, or what they are, just so long as there is a union stamp on it, is that your testimony?

A. That is what we consider fair. We can't consider anything else fair. If it has got the union stamp on it, we take it along. We don't put any-

(Testimony of Charles Helbing.)

thing on the unfair list that has got the stamp, if it is made under union conditions.

Q. How does the company get on or off the unfair list?

A. By the method of employing union men.

Q. I meant, through your minutes, here? It is recorded in a number of instances where your local recommended to the Building Trades Council that a certain company be put on the unfair list. Is that the procedure, for the local to recommend to the Building Trades Council to place a company on the unfair list? Or what is the procedure?

A. Well, I don't know, if we have—yes, that is the procedure.

Q. Why was the Nicolai Company removed on this date from the unfair list?

A. Undoubtedly, because they employed our men, working in their concern, in their place.

Q. Why were they put on the unfair list in the beginning? [1012]

A. Unfair material—as I said before, they wasn't employing our men, and working with the men who did not belong to the organization.

The Foreman: Q. Were they running a non-union shop?

A. The men wasn't in the organization. When we took them in the organization, they were on the fair list.

Mr. Tom Clark: Q. In other words, as Mr. Van Smith asked you, before they were put on the

1346. *Lumber Products Assn., Inc., et al.*

(Testimony of Charles Helbing.)

unfair list; they were running a non-union shop, is that true? A: Yes.

Q. That is true? You are certain of that?

A. Yes.

Q. Is it true that certain of the union mills who employ all A. F. of L. labor do not have the stamp?

A. Yes.

Q. Why is that?

A. Those that do not have the stamp perhaps have not got the required number of men to work there—that is, to call for a stamp.

Q. Any other reason why? A. None.

Q. It couldn't be because they don't pay the scale of wages that they pay down here?

A. Oh, you are talking about here, or where else?

Q. Oh, anywhere. I mean anywhere in the country. Is there any company that does not have the stamp, although they employ all union labor, A. F. of L. labor?

A. I can only speak of this locality on that.

Q. You are not familiar with the rules?

A. Yes.

Q. What is your rule about that?

A. They are—I don't just get your question right.

Q. What is the rule of Local 42 with reference to whether or not some companies don't have the stamp and some companies do have the stamp, that are still A. F. of L.?

(Testimony of Charles Helbing.)

A. Any company in this locality that complies and employs our men can get a stamp.

Q. That is, the Local 42 stamp?

A. No, that is the Brotherhood stamp. [1043]

Q. The Brotherhood stamp? And does that rule apply to the mills in Oregon and Washington?

A. I guess it does—I couldn't swear to that, but that is the rule of the International.

Mr. Morris Clark: Q. Mr. Helbing, do you know Mr. Jones, of the Jones Hardwood Company?

A. I have spoken to the gentleman.

Q. As a matter of fact, you called on him; didn't you, and asked him to put up one of those placards that the Grand Jury has seen here?

A. He asked me first—he sent me a letter in reference to certain things and conditions, and I went down to see Mr. Jones.

Q. And you asked him at that time to put up a placard, didn't you?

A. Yes, to boost local made material.

Q. Now, do you recall some doors that were coming in for a Ferry Building job down here, from a concern in Wisconsin?

A. How long ago was that? When was that date?

Q. Oh, that was within the last year.

A. Within the last year?

Q. Yes. A. No, I can't recall that.

Q. You don't? Don't you recall that Mr. Jones

(Testimony of Charles Helbing.)

Q. had ordered some doors from this concern in Wisconsin and that he couldn't bring them in here?

A. No, he was given concessions—I didn't transact that particular part of it. There were two of us on the job, here, part of the time last year.

Q. Do you recall, Mr. Helbing, that due to the fact that this company in Wisconsin did not have the label, that Mr. Jones obtained certain letters from them stating that they were fully organized A. F. of L., with their local union number on those letters? Do you recall that?

A. No, I don't. What I did tell Mr. Jones was this, when he asked me the question in reference to these doors. I said, "When that time arrives, when you have the doors coming in here, why, we will take it up."

Mr. Tom Clark: Q. The minutes reflect the appointment of a committee with Local 559, a Conference Committee. What is the purpose of that Conference Committee? [1044]

A. The Conference Committee is a committee to get together in reference to getting conditions for labor, hours, and so on and so forth, that we discuss, and take it up with the bosses to try to consummate an agreement.

Q. Is that the Conference Committee, or is that the Negotiating Committee you are talking about?

A. That is the Negotiating Committee.

Q. I am talking about the Conference Committee. So as to refresh your memory, on October 19,

(Testimony of Charles Helbing.)

1937 your minutes show that "The Chair appointed Brothers Edwards, Reinhart, and Gehrman as a committee to meet with Local 550 to make plans for enforcement of the mill stamp." What does that Committee do?

A. I wasn't in office at that time. I was out, and I was—let's see, October, I was out of the City at that time—that was what, 1937?

Q. 1937, yes.

A. Yes, I was out of the City at that time. I was up North.

Q. Do you have a committee of that type, now, since you have been in office?

A. To do what?

Q. To enforce the mill stamp, are the words used here, "to make plans for the enforcement of the mill stamp."

A. Well, yes, we have. We might say that we go to different concerns and we try to negotiate agreements with them along—that is, with the mill and cabinet shops, and so on and so forth, that don't belong to the association; we try to arrange an agreement with all the industry as a whole, whether in or out of the association, and that is what we say, "enforce the stamp"; that is, it is not held to the association. In other words, we ask everybody to go along with our program, the entire industry.

Q. That is the Negotiating Committee. I mean the Enforcement Committee that enforces the stamp rule that you have, that committee.

(Testimony of Charles Helbing.)

A. Oh—

Q. What do they do?

A. There is no committee on—you might [1045] say—how that reads there; so far as enforcement is concerned, that is left up to the—the organization requests them to look out on street so and so, to see if we can't get everybody going along with the organization.

Q. Do you have a committee of your union, and on that same committee representatives of Local 550, for the enforcement of the stamp?

A. Well, that there is—I don't just know how you are trying to put it—the object of that committee—it is not a separate committee; that Conference Committee is first in conference; there is a Committee of the Whole, we would say, from the organizations in reference to conditions concerning the organization, and to work out a condition workable to the organization, by getting agreements and so on and so forth, and from that committee is chosen what you would call the negotiating committee—from that committee is chosen the ones to negotiate an agreement with the employers. That is as plain as I can make it; I can't make it any different than that, because that is all it is.

The Foreman: Except that it is not responsive. Counsel is asking you: Have you now a committee to enforce the labels? Have you? A. No.

The Foreman: All right.

Mr. Tom Clark: Q. Are you the enforcing agency now?

(Testimony of Charles Helbing.)

A. I am the business representative of the organization.

Q. Do you make an effort to enforce the stamp—union label? A. Sure.

Q. What do you do in reference to that, to enforce the union label? What are your duties?

A. I go to the concern and ask them to go along, and I have no trouble getting them to go along. I don't have no trouble enforcing it. Practically every concern in this city—I don't know of any that doesn't employ our men. That goes for furniture houses, cabinet industry, and the planing mills, and all small shops, and so and on so forth.

[1046]

Q. What I am talking about, is not going around and trying to get more members, and trying to settle differences; I am talking about what acts you do to enforce the rule regarding the use of a union label. What do you do in reference to that?

A. Just as I said, we ask this man to go along with the organization, and he does, and he gets the stamp, and he goes along. That is the way it is done. There is no picket methods used.

Q. Well, on November 9, 1937, the minutes show that it was moved and seconded that the Secretary request the District Council of Carpenters to place the firms of Davis Hardwood Company and the Ocean Avenue Mill, managed by George R. Nelson, on the unfair list. Why was that motion carried? Why were they placed on the unfair list?

(Testimony of Charles Helbing.)

A. I told you then I was up in the North, between October and until February of the following year.

Q. You don't know? A. No.

Q. The minutes show that you have a State Mill Committee. What do they do?

A. It is a committee that meets in this State—different parts of the State, in order to promote the interests of the organization.

Q. What does it consist of?

A. As a rule, it is a committee of five, from different localities—committee of five, from San Francisco, say, Oakland, San Jose, and different localities.

Q. Have you been on that committee?

A. Yes, sir.

Q. Do they have minutes?

A. Well, I guess they have had minutes, but it is a voluntary organization; it is not what you would call a recognized group. It is only for ourselves, to acquaint the situation to a larger body; that is, like the State Council of Carpenters, or the International.

Q. Acquaint what situation?

A. In reference to certain conditions that prevail throughout the State. We try to get them organized—different sections—get them organized. If we find a locality that is not organized, we call for help and try to organize them. [1047]

Q. Who would keep those minutes?

(Testimony of Charles Helbing.)

A. Well, that would be McFarland, of Sacramento, I think, is Secretary.

Q. What local is that, that he is in?

A. He is in the Carpenters' Local up there in Sacramento. Well, I don't know just exactly what the number of that is any more; I can't recall that off-hand, but you can get that out of the—

Q. McFarland? A. Yes.

Q. Now, in your minutes of November 30, 1937, it is recorded: "Also reported that Mr. George R. Nelson had signified his intention to operate on a signed union basis within the coming week, and made a recommendation that the Davis Hardwood Company be picketed immediately. It was moved and seconded to confer in the recommendation of B. A. Edwards." Do you remember that?

A. I just told you that I was out of the city at that particular time.

Q. When did you come back, do you remember?

A. I came back in February.

Q. February? You don't have any recollection of that, at all? A. That transaction, no.

Q. Are you familiar with the Weber Fixture matter? A. To a certain extent.

Q. Was it a union shop in 1937? A. No.

Q. You came back in February, 1938, you say?

A. Yes.

Q. In the minutes there are several references to reports from the Building Trades Council. You have those reports, do you?

(Testimony of Charles Helbing.)

A. Yes, we have.

Q. Would you bring them down if you were subpoenaed to bring them? A. Yes, sir.

Q. Now, on April the 19th, 1938, you were there then, weren't you? You had come back?

A. April the 18th?

Q. These books show that you were there, so these are right, aren't they?

A. If they have got it on there that I was back — [1048] you see, I was running down—when I came back—now, get this right—I had a place down in the country, and I lived down in the country, and I would work up here, and then sometimes I would travel back—but I wasn't holding office at that time.

Q. Who was business agent at that time?

A. In 1938?

Q. Yes, April 19th, Edwards?

A. Edwards.

Q. It says, "B. A. report Christenson Lumber Company pickets on on northern shipments 11½ by 6 T. and G., also Coos Bay 2 by 6 shipment picketed." Do you remember that?

A. No, as I say, I was working—sometimes I would work in San Mateo and I wasn't always—

Q. You were at this meeting, the record shows. Do you remember that discussion in the meeting?

A. No, I don't. Have they got me in there?

Q. Yes, it says, "Brother Helbing stated", and you made a statement.

(Testimony of Charles Helbing.)

A. I can't just recall that.

Q. "Brother Arnold reported jams, etc. coming in from McElroy * * * no stamp." Do you remember that?

A. I can't recall all of that stuff, you know. You know, you have lots of meetings.

Q. What do you mean by "no stamp"? Just what do you mean by that?

A. Stuff that wasn't stamped; must have been made under unfair conditions.

Q. Didn't have any stamp on it at all?

A. No.

Q. "Discussion arose on Wheeler & Osgood doors being molded and stamped by local No. 6." Do you remember that?

A. I don't know that—how does that state?

Q. "Discussion arose on Wheeler & Osgood doors being molded and stamped by Local No. 6."

A. By Local No. 6?

Q. By Local stamp No. 6.

A. By Local No. 6 stamp; no, but I tell you what might have happened there; there might have been some doors brought in and they—which they do—made a raised molding or something over the door—you know—changed the [1049] design of the door, and so on and so forth, and then perhaps they stamped it.

Q. Where is Local No. 6?

A. Stamp No. 6—Stamp No. 6 is in Eureka Mill.

(Testimony of Charles Helbing.)

Q. It had a Local stamp No. 6 on it, and a moment ago you said you never questioned any stuff that came in with the stamp. Why would the union be questioning that one?

A. I can't just get you on that.

Q. Then it goes on to say, "Brother Helbing stated that mill stamp was not properly enforced and that the carpenters were not demanding stamped material. Fight of Local No. 42 was to see that carpenters does enforce stamp." Do you remember that statement made?

A. Yes, we had made several statements of that kind at different times, occasionally, to bring the attention to the carpenter, to look for stamped material.

Q. Then you say, "Pledge to mill owners to enforce stamp not carried out, and it may become injurious to coming negotiations." What do you mean by "Pledge to mill owners"?

A. Well, as written there, it goes like this: if material comes in here—floats in here freely, unstamped material, and it was put up by the carpenters, and so on and so forth, it would not derive any protection to the industry or the men, either; that is to the effect that if articles come in here that is made under an unfair condition—

Q. Well, I was not talking about that; I was talking about this sentence that says "Pledge to Mill owners to enforce stamp." What did you mean by that?

(Testimony of Charles Helbing.)

A. The words wasn't—they are not put down correctly. We never use that word "pledge."

Q. It is in the agreement—what do you mean, you had an agreement with reference to the stamp, and the agreement was not being enforced, is that what you mean?

A. No, it is not exactly the agreement not being enforced, but it is in the action in support of the carpenter to look for the stamped material. [1050]

Q. Well, you don't say here anything about the carpenters, you say "Pledge to mill owners." I am talking about that.

A. We don't make no pledge; our agreement shows no pledge of any kind.

Q. What do you mean—we will just forget about the word "pledge"—just what do you make, then? What did he mean there when the Secretary wrote that in there? You were there, and that is your statement. What did you mean?

A. It means that we wanted stamped material used in this locality; that is what it means.

Q. What did you mean by "pledge to mill owners"? That is what I was trying to find out.

A. I never used the word "pledge." We don't use the word, because we have no pledge, but we knew—we know this: if the stamp is not enforced, the industry can't pay us if we floor material that is unstamped, and we expect to get a condition from them—that is what it means.

Q. You have attended the meetings with the mill owners?

A. Yes, sir.

(Testimony of Charles Helbing.)

Q. Has that been discussed in those meetings with mill owners? A. How is that?

Q. Has that been discussed in the meetings with the mill owners?

A. Yes, we tried to have stamped material, and we did everything we could possible, to enforce the stamp.

Q. The last statement you made was that the reason for that was that if the material came in, why, the owners couldn't pay the wages. Did you discuss that with them?

A. Weil, naturally, they told us if we couldn't—nothing could be done about the situation, why, they couldn't do anything, themselves, but we did—if you will notice in the agreement, to compete with the stock proposition that comes in from the North, we set a scale there to try to meet that condition; with a lower rate of scale, we tried to compete and tried to meet that condition, and give them that chance to meet that condition. [1051]

The Foreman: Q. What do you mean, that you gave the employer a reduction from the scale in order to meet that situation?

A. We have in the stock—if you will notice in the agreements, we have such as a special orders or—you know—there is one scale of wages, and on material that floats from the North, that is made cheaper, and so on and so forth, that there is no control over, we give them—that particular branch has got a lower rate of wages, to try to meet the competition.

(Testimony of Charles Helbing.)

A Juror: Q. Has this material that comes in from the North got a stamp on it?

A. It has at the present time; it had not, say, a couple of years back.

Mr. Tom Clark: Q. Did you ever stop any in 1939 that had a stamp on it? A. No.

Q. Who keeps the minutes of the Conference Committee of 550 and 42?

A. Walter O'Leary, I think, from 550.

Q. Who keeps them for you; he does?

A. Yes.

Mr. Morris Clark: Q. On October 11, 1938, Mr. Helbing, the minutes state, "Mr. D. N. Edwards" — that is Mr. Edwards of Wood Products, is it not?

A. D. N. Edwards?

Q. Yes, "Mr. D. N. Edwards wants a six-county set-up." A. Yes.

Q. Is that Mr. Edwards of Wood Products?

A. Yes.

Q. "Said he represents Loop Lumber Company. Local Union No. 42 has a signed agreement with Loop Lumber Company. P. M. wanted to sign for \$8.40, Mr. D. N. Edwards said no, not less than \$8.50. Wants material from North kept out. Has jobs in the Valley and cannot compete." Do you recall the circumstances at the meeting under which that situation arose?

A. That was what, in October?

Q. October, 1938.

A. I can't recall dates so very well. Was that

(Testimony of Charles Helbing.)

not the time that the agreement was thrown over, and trying to transact another agreement?

Q. I presume it was. A. Yes. [1052]

Q. But do you recall the statements being made that "Mr. D. N. Edwards wants material from the North kept out", that he "has jobs in the Valley and cannot compete"? Do you recall that?

A. No, I don't. Is that in our minutes?

Q. That is a statement made by Brother Wilcox.

A. Well, that was the other business agent.

Q. Then Mr. Kelly stated that Mr. D. N. Edwards sat at all meetings except one, the one where hours and wages were the issue. Do you recall—did you sit in on any of those meetings at that time? A. 1938?

Q. That is 1938. A. No.

Q. You did not sit in at those meetings?

A. No.

Q. You were on the Conference Committee, were you not, or the Negotiating Committee, one or the other?

A. Not when that contract was—if you are referring to that—if that is the date; I can't remember the dates just exactly right, but if that has got reference to that set-up in reference to during the time that Edwards would not go along with the organization and he would not sign up the Bay agreement, to arrive at a six-county set-up, I wasn't in that committee.

Q. You were not in that committee.

(Testimony of Charles Helbing.)

A. No.

Mr. Tom Clark: Any questions, Gentlemen? If not, I believe that is all, Mr. Foreman.

The Foreman: Mr. Helbing, I presume that counsel might wish to question you further. On reasonable notice, if you are excused now, would you return under the present subpoena?

A. Yes.

The Foreman: Then you are excused.

The Witness: Thank you.

(The witness was excused and retired from the room.)

[Endorsed]: Filed Jun. 23, 1942. [1053]

[Title of District Court and Cause.]

STIPULATION AND ORDER FOR TRANSMITTING OF ORIGINAL EXHIBITS AND INCORPORATING MATTERS BY REFERENCE INTO BILL OF EXCEPTIONS, AND EXTENDING THE TERM OF COURT.

It Is Hereby Stipulated by and between the above-named plaintiff and the union defendants and appellants, acting through their undersigned attorneys, that the original exhibits admitted in evidence in the case, or marked for identification, and offered in evidence and rejected, shall be forwarded by the Clerk of the above-entitled Court to the

United States Circuit Court of Appeals for the Ninth Circuit, to accompany the transcript of record on appeal, but that pending the preparation of the Bill of Exceptions and Transcript of the Record on Appeal, that the Exhibits be and remain in the custody of the Clerk of this Court.

It Is Further Stipulated that this Stipulation and Order shall be contained in the Bill of Exceptions and that so much of [1054] said Exhibits as shall not, by reason of their nature or length, be set forth in the Bill of Exceptions, shall, by this reference be incorporated in and made a part of said Bill of Exceptions to the same extent and effect as though set forth therein at length.

It Is Further Stipulated that the Findings of Fact and Conclusions of Law on Pleas in Abatement, filed January 14, 1942, shall be transmitted as a part of the Clerk's record under Rule VIII of the Rules of Procedure in Criminal Cases, and by this reference such findings and conclusions are incorporated in and made a part of the Bill of Exceptions without being repeated therein at length.

It Is Further Stipulated that for all purposes of the case and the appeals herein, the term of Court shall be extended to and including August first, 1942.

Dated: June 11, 1942.

THURMAN ARNOLD
FRANK J. HENNESSY
WALLACE HOWLAND

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United States of America.

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Attorneys for Union Defendants
and Appellants.

It is So Ordered.

Dated: June 11th, 1942.

A. F. ST. SURE

Judge of the United States
District Court. [1055]

CERTIFICATE

I, A. F. St. Sure, Judge of the United States District Court for the Northern District of California, Southern Division, and the Judge before whom the trial of the above-entitled case was had, do hereby certify that the foregoing Bill of Exceptions, consisting of four (4) volumes, contains all of the evidence offered, admitted or adduced at the trial of said cause, and further contains all of the proceedings had and the exceptions taken which are applicable to the questions raised upon this appeal and said Bill of Exceptions is hereby approved, settled, allowed, certified and filed as a true and correct Bill of Exceptions in said cause, and is hereby made a part of the record in said cause, all

within the term of Court and time required by law, and within the time fixed by the order of the undersigned Judge and the order of extension made by the United States Circuit Court of Appeals for the Ninth Circuit, which is on file herein.

Dated: June 23, 1942.

A. F. ST. SURE,

United States District Judge.

Receipt of a copy of the within proposed bill of exceptions consisting of 4 volumes including this is hereby admitted this 13th Day of June, 1942.

WALLACE HOWLAND,

Attorneys for Plaintiff,

United States of America.

[Endorsed]: Filed Jun 11, 1942. [1056]

[Title of District Court and Cause.]

VERDICT

We, the Jury, find as to the defendants at the bar on the First Count of the Indictment as follows:

Brass & Kuhn Company	Guilty
Commercial Fixture & Store Front Institute	Guilty
Fink & Schindler Co.	Guilty
L & E Emanuel, Inc.	Guilty
Mangrum, Holbrook, & Elkus, a corp.	Guilty.

vs. United States of America

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Mullen Manufacturing Company	Guilty
Alameda County Building & Construction Trades Council	Guilty
The Bay Counties District Council of Carpenters of the United Brother- hood of Carpenters and Joiners of America	Guilty
The United Brotherhood of Carpenters and Joiners of America	Guilty
The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42	Guilty
The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 556	Guilty
J. F. Cambiano	Guilty
Joseph L. Emanuel	Guilty
J. G. Ennes	Guilty
Charles Helbing	Guilty
C. H. Irish	Guilty
W. P. Kelly	Guilty
Walter O'Leary	Guilty
John Mullen	Guilty
Emil H. Ovenberg	Guilty
Charles Roe	Guilty
	[1057]
Dave Ryan	Guilty
W. L. Wilcox	Guilty

L. H. HEARD,
Foreman.

[Endorsed]: Filed Dec. 12, 1941. [1058]

1366 *Lumber Products Assn., Inc., et al.*

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA.

vs.

BRASS & KUHN COMPANY, COMMERCIAL
FIXTURE & STORE FRONT INSTITUTE,
FINK & SCHINDLER CO., L. & E. EMANUEL,
INC., MANGRUM, HOLBROOK &
ELKUS, a corp., MULLEN MANUFACTURING
COMPANY, ALAMEDA COUNTY
BUILDING & CONSTRUCTION TRADES
COUNCIL, THE BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA,
THE UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA,
THE UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA
MILLMEN'S UNION No. 42, THE UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA—MILLMEN'S
UNION No. 550.

JUDGMENT

On this 20th day of December, 1941, came the
United States Attorney, and the defendants above

named, appearing in proper person, and by counsel, and

The defendants having been convicted on verdict of guilty to the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendants did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendants being now asked whether they have anything to say before judgment is pronounced against them and no sufficient cause being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that Brass & Kuhn Company, Commercial Fixture & Store Front Institute, Fink & Schindler Co., L. & E. Emanuel, Inc., Mangrum, Holbrook & Elkus, a corp., Muller Manufacturing Company, Alameda County Building & Construction Trades Council, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America. The United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550 be and each of them are hereby sentenced to pay a fine to the United States of America in the sum of Five Thousand and No/100 (\$5,000.00) Dollars; .

1368 *Lumber Products Assn., Inc., et al.*

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

A. F. ST. SURE,

Judge.

Examined by:

WALLACE HOWLAND,

Special Assistant to the
Attorney General.

Entered and filed this 20th day of December, 1941.

WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Judgment as to defendant Brass & Kuhn Company modified this 10th day of January, A.D. 1942.

WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Entered in Vol. 32 Judg. and Decrees at Page
611. [1059]

vs. United States of America

1369

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

vs.

D. N. EDWARDS, ANDREW P. NELSON, NELS E. NELSON, and ROBERT W. SHANNON.

JUDGMENT

On this 22nd day of December, 1941, came the United States Attorney, and the defendants above named, appearing in proper person, and by counsel, and

The defendants having been convicted on plea of nolo contendere to the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendants did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendants being now asked whether they have anything to say before judgment is pronounced against them and no sufficient cause being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that D. N. Edwards, Andrew P. Nelson, Nels E. Nelson, and Robert W. Shannon, be and each of them are hereby sentenced to pay a fine to the United States of America in the sum of One Thousand and No/100 (\$1,000.00) Dollars; It is further ordered that execution of Judgment be stayed for Ten Days.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

A. F. ST. SURE,

Judge.

Examined by:

WALLACE HOWLAND,

Special Assistant to the
Attorney General.

Entered and Filed this 22nd day of December,
1941.

WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Entered in Vol. 32 Judg. and Decrees at Page
612. [1060]

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2.

UNITED STATES OF AMERICA.

vs.

ACME MANUFACTURING CO. INC., BOOR,
MAN LUMBER CO., EUREKA MILL &
LUMBER COMPANY, EUREKA SASH,
DOOR & MOULDING MILLS, HOGAN
LUMBER CO., LOOP LUMBER & MILL
COMPANY, THE LUMBER PRODUCTS AS-
SOCIATION, INC., SMITH LUMBER CO.,
TILDEX LUMBER CO., E. K. WOOD LUM-
BER CO., WOOD PRODUCTS, INC., ZE-
NITH MILL & LUMBER CO.

JUDGMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendants above named, appearing in proper person, and by counsel, and

The defendants having been convicted on plea of nolo contendere to the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendants did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in

millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendants being now asked whether they have anything to say before judgment is pronounced against them and no sufficient cause being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that Acme Manufacturing Co., Inc., Boorman Lumber Co. Eureka Mill & Lumber Company, Eureka Sash, Door & Moulding Mills, Hogan Lumber Co., Loop Lumber & Mill Company, The Lumber Products Association, Inc., Smith Lumber Co., Tilden Lumber Co., E. K. Wood Lumber Co., Wood Products, Inc., Zenith Mill & Lumber Co., be and each of them are hereby sentenced to pay a fine to the United States of America in the sum of Two Thousand and No/100 (\$2,000.00) Dollars.

It Is Further Ordered that the Second Count of the Indictment, be and the same is hereby dismissed.

A. F. ST. SURE,

Judge.

Examined by:

WALLACE HOWLAND,

Special Assistant to the
Attorney General.

Entered and filed this 20th day of December, 1941.

WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

vs. United States of America

1373

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S.

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

78.

J. F. CAMBIANO.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, J. F. Cambiano, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him

1374 *Lumber Products Assn., Inc., et al.*

and no sufficient cause to the contrary being shown or appearing to the Court. It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine to the United States in the sum of Five Thousand and No/100 (\$5,000.00) Dollars; if said Fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,
Judge.

A True Copy. Certified this 20th day of December, 1941.

WALTER B. MALING,
Clerk.

By C. W. CALBREATH,
Deputy Clerk.

Examined by:

WALLACE HOWLAND,
Special Assistant to the
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page
600. [1062]

vs. United States of America

1375

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

v.

CHARLES HELBING

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, Charles Helbing, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having

been found guilty of said offense, pay a fine to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE HOWLAND,

Special Assistant to the
Attorney General.

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA,

v.

C. H. IRISH.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, C. H. Irish, appearing in proper person, and by counsel and.

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court. It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine to the

1378 *Lumber Products Assn., Inc., et al.*

United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid, that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months;

It is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE HOWLAND,

Special Assistant to the
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page 603. [1064]

District Court of the United States, Northern District of California; Southern Division.

No. 26977-S.

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2.

UNITED STATES OF AMERICA

~ v.
W. P. KELLY.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, W. P. Kelly, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine

to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE ROWLAND,

Special Assistant to the
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page
604. [1065]

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

v.

WALTER O'LEARY.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, Walter O'Leary, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, hav-

ing been found guilty of said offense, pay a fine to the United States in the sum of One Thousand and No 100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and ~~that~~ the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,
Clerk.

By C. W. CALBREATH,
Deputy Clerk.

Examined by:

WALLACE HOWLAND,
Special Assistant to the
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page 603. [1066]

vs. United States of America

1383

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

v.

EMIL H. OVENBERG.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, Emil H. Ovenberg, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having

been found guilty of said offense, pay a fine to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE HOWLAND,

Special Assistant to the
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page
606. [1067]

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

DAVE RYAN.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, Dave Ryan, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court—

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine to the

United States in the sum of Five Thousand and No/100 (\$5,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in a institution of the Jail Type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December; 1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE HOWLAND,

Special Assistant to the

Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page 599. [1068]

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Section 1 and 2

UNITED STATES OF AMERICA

v.

W. L. WILCOX.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, W. L. Wilcox, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court. It is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine to the

United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,
Clerk.

By C. W. CALBREATH,
Deputy Clerk.

Examined by:

WALLACE HOWLAND,
Special Assistant to the
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page
608. [1069]

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

CHARLES ROE.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, Charles Roe, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, and duly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine to the

United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE HOWLAND,

Special Assistant to the

Attorney General.

Entered in Vol 32 Judg. and Decrees at Page 607. [1070]

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

vs.

REDWOOD MANUFACTURING CO., HARRY W. GAETJEN, CHARLES GUSTAFSON, J. A. HART, W. P. HOLMES, CHARLES MONSON, FRED SPENCER, CARL A. WARDEN, and CHRISTIAN A. WILDER.

JUDGMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendants above named, appearing in proper person, and by counsel, and

The defendants having been convicted on plea of nolo contendere to the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendants did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendants being now asked whether they have anything to say before judgment is pronounced against them and no

Sufficient cause being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that Redwood Manufacturing Co., Harry W. Gaetjen, Charles Gustafson, J. A. Hart, W. P. Holmes, Charles Mofson, Fred Spencer, Carl A. Warden, and Christian A. Wilderbe and each of them are hereby sentenced to pay a fine to the United States of America in the sum of One Thousand and No/100 (\$1,000.00) Dollars; It is further ordered that execution of Judgment be stayed for Ten Days.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

A. F. ST. SURE,

Judge.

Examined by:

WALLACE HOWLAND,

Special Assistant to the

Attorney General.

Entered and filed this 20th day of December, 1941.

WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Entered in Vol. 32 Judg. and Decrees at Page 610. [1071]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday the 20th day of December, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

This case came on regularly this day for the pronouncing of judgment on certain defendants: Tom Clark, Esq., and Wallace Howland, Esq., Special Assistants to the Attorney General, appeared on behalf of the United States. Harold Faulkner, Esq.; Hugh McKevitt, Esq.; Jack Howard, Esq.; M. A. Harrison, Esq.; Moses Lasky, Esq.; J. M. Thomas, Esq.; M. J. Doyle, Esq.; William T. Doyle, Esq.; Maurice E. Cary, Esq.; and Clarence E. Todd, Esq., appeared as Attorneys for the defendants.

Mr. McKevitt moved the Court that the matter of the pronouncing of judgment as to certain defendants be continued. After hearing Mr. McKevitt, It Is Ordered that said motion be denied.

Mr. Howard moved the Court to grant a new trial as to certain defendants. After hearing Mr. How-

ard, It Is Ordered that said motion be denied. Mr. Howard then moved [1072] the Court to grant the Pleas in Abatement heretofore filed by certain defendants, and to grant a Motion in Arrest of Judgment as to said defendants. Mr. Howard offered in evidence all the papers filed in Miscellaneous Case No. 2734, entitled "In the Matter of the Subpoena returnable before the Grand Jury impaneled by the Honorable A. F. St. Sure, Judge of the above-entitled Court, which subpoena was issued out of and under the seal of said Court and directed to Local Unions, No. 42 and No. 550, United Brotherhood of Carpenters and Joiners of America", together with the Minute order entered in matter on May 13, 1940. After hearing Mr. Howard, It Is Ordered that said motions be and the same are hereby denied.

Mr. Faulkner, on behalf of certain defendants, moved the Court to grant a new trial as to certain defendants. After hearing Mr. Faulkner, It Is Ordered that said motion be denied. Mr. Faulkner, on behalf of the same defendants, moved the Court to grant a Motion in Arrest of Judgment. After hearing Mr. Faulkner, It Is Ordered that said motion be denied.

Thereupon the defendants who were found Guilty by the Jury, being present in Court, were called for judgment. The defendants having been now asked whether they have anything to say why judgment should not be pronounced against them, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court,

Ordered and Adjudged that Alameda County Building & Construction Trades Council, The Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, [1073] The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, for the offense of which they stand convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, be and each of them is hereby sentenced to pay a fine to the United States of America in the sum of Five Thousand and No/100 (\$5,000.00) Dollars.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendants.

Ordered that judgment be entered herein accordingly.

* * *

Ordered and Adjudged that J. F. Cambiano, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States of America in the sum of Five Thousand and No/100 (\$5,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to

be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein. [1074]

Ordered and Adjudged that the defendant Dave Ryan, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of Five Thousand and No/100 (\$5,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

* * *

Ordered and Adjudged that the defendant Charles Helbing, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said [1075] defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

* * *

Ordered and Adjudged that the defendant C. H. Irish, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

[1976]

Ordered and Adjudged that the defendant W. P. Kelly, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thou-

sand and No/100 (\$1,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon the motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

Ordered and Adjudged that the defendant Walter O'Leary, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the [1077] Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

* * *

Ordered and Adjudget that the defendant Emil H. Ovenberg, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No/100 Dollars (\$1,000.00), or if said fine is not paid that the defendant be committed to the custody of the United States Marshal for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

* * *

Ordered and Adjudged that the defendant Charles Roe, for the offense of which he stands convicted on the verdict [1978] of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No/100 Dollars (\$1,000.00), or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

Ordered and Adjudged that the defendant W. L. Wilcox, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to the [1079] said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

Thereupon the defendants who had previously entered pleas of Nolo Contendere, with the excep-

tion of D. N. Edwards, Andrew P. Nelson, Nels E. Nelson and Robert W. Shannon, being present in Court, were called for judgment.

With the consent of Mr. Clark, each of the defendants who had previously entered pleas of Nolo Contendere were permitted to withdraw said pleas as to the Second Count of the Indictment. Upon motion of the Attorneys for the defendants, and with the consent of Mr. Clark, the Second Count of the Indictment was dismissed as to these defendants.

After hearing Mr. Clark and the various Attorneys for the defendants, and the said defendants having been now asked whether they have anything to say why judgment should not be pronounced against them, and no sufficient cause to the contrary being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that the defendants—

Acme Manufacturing Co., Inc.,

Boorman Lumber Co.,

Eureka Mill & Lumber Company,

Eureka Sash, Door & Moulding Mills, [1080]

Hogan Lumber Co.,

Loop Lumber & Mill Company,

The Lumber Products Association, Inc.,

Smith Lumber Co.,

Tilden Lumber Co.,

E. K. Wood Lumber Co.,

Wood Products, Inc.,

Zenith Mill & Lumber Co.,

for the offense of which they stand convicted on their pleas of Nolo Contendere to the offense charged in the First Count of the Indictment, be and each of them is hereby sentenced to pay a fine to the United States of America in the sum of Two Thousand and No/100 (\$2,000.00) Dollars.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendants.

Ordered that judgment be entered herein as to each of the aforesaid defendants.

Upon motion of the Attorneys for the said defendants, ordered that execution of judgment be stayed for the period of ten (10) days.

* * *

Ordered and Adjudged that Harry W. Gaetjen, Charles Gustafson, J. A. Hart, W. P. Holmes, Charles Monson, Fred Spencer, Carl A. Warden, and Christian A. Wilder, for the offense of which they stand convicted on their pleas of Nolo Contendere to the offense charged in the First Count of the Indictment, be and each of them is hereby sentenced to pay a fine to the United States of America in the sum of One Thousand (\$1,000.00) [1081] Dollars.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendants.

Ordered that judgment be entered herein as to each of said defendants.

Upon motion of the Attorneys for the defendants,

it is ordered that execution of judgment be stayed for the period of ten (10) days.

Ordered that the matter of the pronouncing of judgment as to the defendants D. N. Edwards, Andrew P. Nelson, Nels E. Nelson and Robert W. Shannon be continued until Monday, December 22, 1941. [1082]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 22nd day of December, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977

[Title of Cause.]

This case came on regularly this day for the pronouncing of judgment upon the defendants D. N. Edwards, Andrew P. Nelson, Nels E. Nelson and Robert W. Shannon. The said defendants were present in Court with their Attorney Morgan J. Doyle, Esq. Walter M. Lehman, Esq., Special Assistant

to the Attorney General, was present for and on behalf of the United States.

With the consent of Mr. Lehman, the defendants were allowed to withdraw their former plea of Nolo Contendere as to the Second Count of the Indictment. Upon motion of Mr. Doyle and with consent of Mr. Lehman, It Is Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendants.

The defendants were then called for judgment, and said defendants having been now asked whether they have anything [1083] to say why judgment should not be pronounced against them, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered that the defendants D. N. Edwards, Andrew P. Nelson, Nels E. Nelson, and Robert W. Shannon, for the offense of which they stand convicted on their pleas of Nolo Contendere to the offense charged in the First Count of the Indictment, be and each of them is hereby sentenced to pay a fine to the United States of America in the sum of One Thousand and No/100 (\$1,000.00) Dollars.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendants, as aforesaid.

Further Ordered that judgment be entered herein accordingly.

Upon motion of Mr. Doyle and with consent of Mr. Lehman, It Is Ordered that execution of said judgment be Stayed for the period of ten (10) days.

CLERK'S COPY

Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 666

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 667

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 668

LUMBER PRODUCTS ASSOCIATION, INC., ACME MANUFACTURING
CO., INC., EUREKA SASH, DOOR & MOULDING MILLS, ET AL.,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 674

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES
COUNCIL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 675

ROORMAN LUMBER COMPANY, HOGAN LUMBER COMPANY, LOOP
LUMBER & MILL COMPANY, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { NOVEMBER 11, 1944.
NOVEMBER 13, 1944.

NO. 10011

United States
Circuit Court of Appeals
For the Ninth Circuit.

LUMBER PRODUCTS ASSOCIATION, INC.,
a corporation, et al.,

Appellants,

VS.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Four Volumes

VOLUME IV

Pages 1407 to 1669

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division.

[Title of Court and Cause.]

NOTICE OF APPEAL OF APPELLANTS
LUMBER PRODUCTS ASSOCIATION,
et al.

Names and Addresses of Appellants

Lumber Products Association, Inc., a
corporation,

3196 24th Street,

San Francisco, California.

Acme Manufacturing Co., Inc., a corporation,

345 Bayshore Boulevard,

San Francisco, California.

Eureka Sash, Door & Moulding Mills, a cor-
poration,

1715 Mission Street,

San Francisco, California.

Carl Warden,

2348 Funston Avenue,

San Francisco, California.

Harry W. Gaetjen,

3196 24th Street,

San Francisco, California.

Charles Monson,

345 Bayshore Boulevard,

San Francisco, California.

Fred Spencer,

1715 Mission Street,

San Francisco, California.

Names and Addresses of Appellants (Cont.)

W. P. Holmes,
6th and Channel Streets,
San Francisco, California.

Charles Gustafson,
560 Brannan Street,
San Francisco, California.

Christian A. Wilder,
96 Ravenwood Drive,
San Francisco, California.

J. A. Hart,
Jerrold and Napoleon Streets,
San Francisco, California.

Names and Addresses of Appellants' Attorneys

James M. Thomas,
703 Market Street,
San Francisco, California.

Maurice E. Harrison,
Moses Lasky,
Brobeck, Phleger & Harrison,
111 Sutter Street,
San Francisco, California.

Offense:

Violation of Section 1 of the Act of Congress of
July 2, 1890, known as the Sherman Anti-Trust
Act. [1084-A]

Date of Judgment:

December 20, 1941.

Brief Description of Judgment on Sentence:

Lumber Products Association, Inc., Acme Manufacturing Co., Inc., Eureka Sash, Door & Moulding Mills, each fined \$2,000. Carl Warden, Harry W. Gaetjen, Charles Monson, Fred Spencer, W. P. Holmes, Charles Gustafson, Christian A. Wilder, and J. A. Hart each fined \$1,000.

Each of us, the above named appellants, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned, respectively rendered against him or it, on the grounds set forth below.

/s/ LUMBER PRODUCTS ASSOCIATION INC.

(Seal) (Lumber Products Association, Inc.)

/s/ By Chas. Monson

President

/s/ By Harry W. Gaetjen

Secretary

/s/ ACME MANUFACTURING CO., INC.

(Seal) (Acme Manufacturing Co., Inc.)

/s/ By Chas. Monson

President

/s/ By Doris Monson

Secretary

1410 *Lumber Products Assn., Inc., et al.*

/s/ EUREKA SASH, DOOR &
MOULDING MILLS

(Seal) (Eureka Sash, Door & Moulding
Mills)

/s/ By Fred S. Spencer
Vice President

/s/ By Fred S. Spencer
Secretary

/s/ CARL A. WARDEN

/s/ HARRY W. GAETJEN

/s/ CHARLES MONSON

/s/ FRED S. SPENCER

/s/ W. P. HOLMES

/s/ CHAS. GUSTAFSON

/s/ CHRISTIAN A. WILDER

/s/ J. A. HART [1084-B]

Dated: December 24, 1941.

Grounds of Appeal

The court erred in overruling the demurrers of appellants to the indictment and to the first count thereof.

The court erred in denying the motions of defendants Warden Brothers, Brannan Street Planing Mill, and Sage & Wilder to quash the indictment and the first count thereof.

The court erred in denying the motions of

Charles Gustafson and Christian A. Wilder to quash bench warrants, vacate order for issuance thereof, and to discharge bail.

/s/ JAMES M. THOMAS

/s/ MAURICE E. HARRISON

/s/ MOSES LASKY

/s/ BROBECK, PHLEGER &
HARRISON

Attorneys for Appellants

[Endorsed]: Filed, Dec. 24, 1941. [1084-C]

[Title of District Court and Cause.]

NOTICE OF APPEAL OF APPELLANT
ALAMEDA COUNTY BUILDING AND
CONSTRUCTION TRADES COUNCIL.

The name of the appellant herein is Alameda County Building and Construction Trades Council; address, 2111 Webster Street, Oakland, California.

The name and address of appellant's attorney is Clarence E. Todd, 200 Bush Street, San Francisco, California.

The offense of which appellant was convicted is a violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act.

The date of the judgment appealed from was December 20, 1941.

1412 *Lumber Products Assn., Inc., et al.*

The sentence was a fine of \$5,000.00.

The above named appellant appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment above mentioned on the grounds set forth below.

Dated at Oakland, California, December --, 1941.

ALAMEDA COUNTY BUILD-
ING AND CONSTRUCTION
TRADES COUNCIL

By J. H. QUINN

President

By CHARLES R. GURNEY

Secretary

CLARENCE E. TODD

Attorney for Appellant

200 Bush Street

San Francisco [1085]

Grounds of Appeal

1. That the verdict is contrary to law.
2. That the Court erred in the decision of questions of law arising during the course of the trial and which rulings were duly excepted to by this appellant.
3. That the Court erred in denying the motion of this appellant to dismiss based upon the insufficiency of the indictment to state an offense, which rulings were duly excepted to by appellant.
4. That the Court erred in numerous rulings

upon the admissibility of evidence which were highly prejudicial to this appellant and excepted to by this appellant, all as appears in the official stenographic reporter's transcript of the proceedings had and taken at the trial.

5. That the Court erred in denying the motions of this appellant to dismiss or for a directed verdict of acquittal upon the grounds of the insufficiency of the evidence to sustain a verdict of conviction, which rulings were duly excepted to by this appellant.

6. That there is a fatal variance between the charge of the indictment and the proof in this, that the indictment alleges that defendant manufacturers agreed to accede and did accede to wage scale demands of defendant unions, in return for which defendant unions agreed to engage and have engaged in activities to restrain the sale and shipment of millwork and patterned lumber in interstate commerce and that in so agreeing and engaging defendant unions were not acting to enforce or protect the right to bargain collectively nor in the course of a legitimate labor dispute as to wages, hours and working conditions, or as to any other legitimate objective of labor, whereas the proof is to the contrary and diametrically opposed to such allegations of the indictment. [1086]

7. That the Court misdirected the jury in matters of law and in instructing and refusals to instruct the jury, and such errors and rulings were highly prejudicial to this defendant and duly excepted to by this defendant, all as appears in the

official stenographic reporter's transcript of the proceedings had and taken at the trial and of the charge given by the Court and the proposed instructions submitted and filed by defendants and which are of record in the actions.

8. That the verdict is contrary to the evidence.
9. That there is no evidence to sustain the verdict.
10. That there is insufficient evidence to sustain the verdict.
11. That the evidence in the case is as consistent with innocence as with guilt.
12. That counsel prosecuting the case were guilty of prejudicial misconduct during the trial and before the jury in comments relative to defendants who had made a plea of *nolo contendere* and by reference to such as pleas of guilt; that the Court erred in its rulings and statements concerning such pleas over the objections of this defendant and to which this defendant reserved exceptions.

ALAMEDA COUNTY BUILD-
ING AND CONSTRUCTION
TRADES COUNCIL

By J. H. QUINN

President

By CHARLES R. GURNEY

Secretary

CLARENCE E. TODD

Attorney for Appellant

200 Bush Street

San Francisco

Received a copy of the within Notice of Appeal
this 26th day of December, 1941.

THURMAN ARNOLD

FRANK J. HENNESSY

A. J. ZIRPOLI

TOM C. CLARK

WALLACE HOWLAND

CHARLES S. BURDELL

WALTER LEHMAN

By WALTER LEHMAN

Attorneys for Plaintiff

[Endorsed]: Filed Dec. 26, 1941. [1087]

[Title of Court and Cause:]

NOTICE OF APPEAL OF APPELLANTS
BOORMAN LUMBER COMPANY, et al.

I. Names and Addresses of Appellants

Boorman Lumber Company

10035 East 14th Street, Oakland, Calif.

Hogan Lumber Company,

Second & Alice Streets, Oakland, Calif.

Loop Lumber & Mill Company,

Broadway & Blanding, Alameda, Calif.

Smith Lumber Company, a corporation,

19th Avenue and Estuary, Oakland, Calif.

Filden Lumber Company, a corporation,

1519 Nevin Street, Richmond, Calif.

E. K. Wood Lumber Company, a corporation,

Frederick & King Streets, Oakland, Calif.

1416 *Lumber Products Assn., Inc., et al.*

Zenith Mill & Lumber Company, a corporation,
2101 East 12th St., Oakland, Calif.

Eureka Mill & Lumber Co., a corporation,
3737 San Leandro Ave., Oakland, Calif.

Wood Products, Inc.,
1924 Broadway, Oakland, Calif.

II. The Name and Address of Appellants' Attorney is:

Morgan J. Doyle,
2314 Shell Building, San Francisco, Calif.

III. Offense:

An alleged violation of Section I of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

IV. Date of Judgment:

December 20, 1941.

V. Brief Description of Judgment or Sentence:

A fine in the amount of \$2,000.00 was imposed upon each of the above named appellants.

VI. A Succinct Statement of the Grounds of Appeal:

The grounds of appeal, succinctly stated, are, that the indictment herein, (first count thereof) does not allege facts sufficient to constitute a public offense.

We, the above named appellants, and each of the above named appellants, hereby appeal to the United States Circuit [1088] Court of Appeals for the Ninth Circuit from the judgment and judg-

ments above mentioned, on the grounds set forth hereinbefore.

BOORMAN LUMBER COM-
PANY,

By GEO. CLAYBERG

HOGAN LUMBER COMPANY

By THOMAS P. HOGAN, JR.

LOOP LUMBER & MILL COM-
PANY,

By WILLIAM CHATHAM

SMITH LUMBER COMPANY,
a corporation,

By REGINALD SMITH

TILDEN LUMBER COMPANY,
a corporation,

By VICTOR J. HERMAN

E. K. WOOD LUMBER COM-
PANY, a corporation,

By JOHN B. WOOD

ZENITH MILL & LUMBER
COMPANY, a corporation,

By ROY M. DREISBACH

EUREKA MILL & LUMBER
CO., a corporation,

By CLARENCE T. GILBERT

WOOD PRODUCTS, INC.,

By D. N. EDWARDS

Dated: December 24, 1941.

MORGAN J. DOYLE,

Attorney for Appellants

[Endorsed]: Filed Dec. 26, 1941. [1089]

[Title of Court and Cause.]

NOTICE OF APPEAL OF APPELLANTS
D. N. EDWARDS, NELS E. NELSON,
ROBERT W. SHANNON, AND ANDREW
NELSON.

I. Names and Addresses of Appellants:

D. N. Edwards,
1924 Broadway,
Oakland, Calif.

Nels E. Nelson,
1 Castro Street,
Hayward, California.

Robert W. Shannon,
400 Davis Street,
San Leandro, California.

Andrew Nelson,
10th & Ohio Streets,
Richmond, Calif.

II. The Name and Address of Appellants' Attorney is:

Morgan J. Royle,
2314 Shell Building,
San Francisco, Calif.

III. Offense:

An alleged violation of Section I of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

IV. Date of Judgment:

December 22, 1941.

V. ~~Brief~~ Description of Judgment or Sentence:

A fine in the amount of \$1,000.00 was imposed upon each of the above named appellants.

VI. Name of Prison Where Now Confined, if not
on Bail:

At liberty.

VII. A Succinct Statement of the Grounds of Appeal:

The grounds of appeal, succinctly stated, are, that the indictment herein, (first count thereof) does not allege facts sufficient to constitute a public offense.

We, the above-named appellants, and each of the above named appellants, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and judgments above mentioned, on the grounds set forth hereinbefore. [1090]

D. N. EDWARDS

NELS E. NELSON

ROBERT W. SHANNON

ANDREW NELSON

Dated: December 24, 1941.

MORGAN J. DOYLE

Attorney for Appellants

[Endorsed]: Filed Dec. 26, 1941. [1091]

1420 *Lumber Products Assn.; Inc., et al.*

[Title of District Court and Cause.] §

NOTICE OF APPEAL BY CERTAIN
DEFENDANTS AND APPELLANTS

Names and Addresses of Appellants:

The Bay Counties District Council of Carpenters
of the United Brotherhood of Carpenters and
Joiners of America,

200 Guerrero Street,

San Francisco, California;

The United Brotherhood of Carpenters and Joiners
of America, Millmen's Union No. 42,

200 Guerrero Street,

San Francisco, California;

The United Brotherhood of Carpenters and Joiners
of America, Millmen's Union No. 550,

2111 Webster Street,

Oakland, California;

J. F. Cambiano,

17 Aragon Boulevard,

San Mateo, California; [1092]

Charles Helbing,

713 4th Avenue,

Redwood City, California;

C. H. Irish,

3569 Laguna Avenue,

Oakland, California;

W. P. Kelly,
2710 San Jose Avenue,
Alameda, California;

Walter O'Leary,
640 60th Street,
Oakland, California;

Emil H. Ovenberg,
763 Haight Avenue,
Alameda, California;

Dave Ryan,
530 14th Street,
San Francisco, California;

W. L. Wilcox,
224 Miramar Avenue,
San Francisco, California;

Charles Roe,
561 Pearl Avenue,
Hayward, California.

Names and Addresses of Appellants' Attorneys:

Joseph O. Carson, II,
222 East Michigan Street,
Indianapolis, Indiana;

Harry N. Routzohn,
1212 Third National Bank Building,
Dayton, Ohio;

Hugh K. McKevitt,
Jack M. Howard,
1620 Russ Building,
San Francisco, California.

Offense:

Violation of Sherman Anti-Trust Act, 26 Stat. 209, Section 1 (15 USCA, Section 1), by conspiracy to restrain interstate trade and commerce in mill work and patterned lumber.

Date of Judgement:

December 20, 1941.

Brief description of judgment or sentence:

Conviction pursuant to jury verdict of combining and conspiring for the purpose of unduly, unreasonably and directly restraining interstate trade and commerce in mill work and patterned lumber and unduly and unreasonably and directly restraining such interstate trade and commerce as [1093] intended by such combination and conspiracy in violation of the Sherman Anti-Trust Act, 26 Stat. 209, Section 1 (15 USCA, Section 1), for which appellants were sentenced as follows:

The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, to pay fine of Five Thousand (\$5,000.00) Dollars, lawful money of the United States of America;

The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, to pay fine of Five Thousand (\$5,000.00) Dollars, lawful money of the United States of America;

The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, to pay fine of Five Thousand (\$5,000.00)

Dollars, lawful money of the United States of America;

J. F. Cambiano, to pay fine of Five Thousand (\$5,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

Charles Helbing, to pay fine of One Thousand (\$1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

C. H. Irish, to pay fine of One Thousand (\$1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

W. P. Kelly, to pay fine of One Thousand (\$1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

Walter O'Leary, to pay fine of One Thousand (\$1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months; [1094]

Emil H. Ovenberg, to pay fine of One Thousand (\$1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a

county jail for a period of six (6) months;

Dave Ryan, to pay fine of Five Thousand (\$5,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

W. L. Wilcox, to pay fine of One Thousand (\$1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

Charles Roe, to pay fine of One Thousand (\$1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months.

Name of prison where now confined, if not on bail:

None, appellants sentenced to pay fines as afore-said.

We, the above named appellants, hereby each severally appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned on the grounds set forth below.

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

By DAVE RYAN, Sect.

Appellant.

THE UNITED BROTHER-
HOOD OF CARPENTERS
AND JOINERS OF AMER-
ICA, MILLMEN'S UNION
NO. 42

By R. H. MILLER, President
Appellant. [1095]

THE UNITED BROTHER-
HOOD OF CARPENTERS
AND JOINERS OF AMER-
ICA, MILLMEN'S UNION
NO. 550

By JOHN TOEDT, President
Appellant.

J. F. CAMBIANO,
Appellant.

CHARLES HELBING,
Appellant.

C. H. IRISH,
Appellant.

W. P. KELLY,
Appellant.

WALTER O'LEARY,
Appellant.

EMIL OVENBERG,
Appellant.

DAVE RYAN,
Appellant.

W. L. WILCOX,
Appellant.

CHARLES ROE,
Appellant.

Grounds of appeal of each appellant severally:

1. That the facts stated in the indictment do not constitute a public offense.
2. That the facts alleged in the indictment fail to state a violation of the Sherman Anti-Trust law.
3. That the indictment is defective in the particulars specified in the demurrer of appellant.
4. That the Court erred in overruling the demurrer of appellant to the indictment.
5. That the Court erred in denying the motion and demand of appellant for a bill of particulars.
6. That the Court erred in sustaining the demurrer to the plea of abatement filed by appellant.
7. That the verdict and the judgment are each contrary to law.
8. That the Court erred in the decision of questions of law arising during the course of the trial and which rulings were duly excepted to by appellant.
9. That the Court erred in denying the motion of appellant to dismiss, based upon the insufficiency of the indictment to state an offense, which ruling was duly excepted to by appellant.
10. That the Court erred in numerous rulings upon the admissibility of evidence which were highly prejudicial to appellant and excepted to by appellant.
11. That the Court erred in denying the motions of appellant, made at the conclusion of the prosecution's case and at the close of the case, to dismiss or for a directed verdict of acquittal upon the

ground of the insufficiency of the evidence to sustain a verdict of conviction and which rulings were duly excepted to by appellant.

12. That the Court misdirected the jury in matters of law and in instructing and refusals to instruct the jury, and such rulings were highly prejudicial to appellant and duly excepted to by [1097] appellant.

13. That the verdict and judgment are each contrary to the evidence.

14. That there is no evidence to sustain the verdict and judgment.

15. That there is insufficient evidence to sustain the verdict and judgment.

16. That the evidence in the case is at least as consistent with innocence as with guilt.

17. That there is a fatal variance between the charge of the indictment and the proof, in this, that the indictment alleges that defendant manufacturers agreed to accede and did accede to wage scale demands of defendant unions in return for which defendant unions agreed to engage and have engaged in activities to restrain the sale and shipment of mill work and patterned lumber in interstate commerce, and that in so agreeing and engaging defendant unions, including this appellant, were not acting to enforce or protect the right to bargain collectively nor in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, whereas, the proof is to the contrary and

diametrically opposed to such allegations of the indictment.

18. That counsel prosecuting the case were guilty of prejudicial misconduct during the trial and before the jury in comments relative to the defendants who had made a plea of nolo contendere, and by reference to such as pleas of guilt; that the Court erred in its rulings and statements concerning such pleas over the objections of appellant and to which appellant reserved exceptions.

19. That the Court erred in denying the motion of appellant for a new trial.

20. That the Court erred in denying the motion of appellant [1098] in arrest of judgment.

21. That the Court erred in denying motions to quash the subpoenas duces tecum, which required the production before the Grand Jury which returned the indictment of the private books, papers and records of the appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42 and The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, all of whom are voluntary unincorporated associations, and which private books, papers and records were used in the prosecution of the case.

22. That appellant was immunized from prosecution in the case by reason of the compulsory production of its or his private papers, books and records at the trial and the introduction thereof in evidence, over the objections of appellant and to

the overruling of which objections exceptions were reserved, and that such compulsory production and introduction in evidence of private papers, books and records violated the rights of appellant under the Fourth and Fifth Amendments to the Constitution of the United States.

The appellant Dave Ryan states the following additional ground of appeal:

That he has at all times been immune from prosecution in the case by reason of having been compelled to appear and testify against himself before the Grand Jury which returned the indictment and over his objections and after having interposed a claim of immunity.

The appellant Charles Helbing states the following additional ground of appeal:

That he has at all times been immune from prosecution in the [1099] case by reason of having been compelled to appear and testify against himself before the Grand Jury which returned the indictment and over his objections and after having interposed a claim of immunity.

The appellant Walter O'Leary states the following additional ground of appeal:

That he has at all times been immune from prosecution in the case by reason of having been compelled to appear and testify against himself before the Grand Jury which returned the indictment and over his objections and after having interposed a claim of immunity.

The appellants J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil H.

1430 *Lumber Products Assn., Inc., et al.*

Ovenberg, Dave Ryan, W. L. Wilcox and Charles Roe each severally state the following additional ground of appeal:

That the portion of the judgment and sentence providing that in default of payment of his fine he be imprisoned in a county jail for a period of six months is illegal and void.

JOSEPH O. CARSON, II,
HARRY N. ROUTZOHN,
HUGH K. McKEVITT,
JACK M. HOWARD,

Attorneys for Appellants.

(Admission of service)

[Endorsed]: Filed Dec. 26, 1941.

[1100]

[Title of District Court and Cause.]

NOTICE OF APPEAL OF APPELLANT
THE UNITED BROTHERHOOD OF CAR-
PENTERS AND JOINERS OF AMERICA.

Name and address of appellant: The United Brotherhood of Carpenters and Joiners of America, Carpenters Building, 222 East Michigan Street, Indianapolis, Indiana. [1101]

Names and addresses of appellant's attorneys:

Hugh K. McKevitt,

Attorney for Defendant The United Bro-
therhood of Carpenters and Joiners of
America,

1620 Russ Building,
San Francisco, Calif.

Charles H. Tuttle,

15 Broad Street,

New York, N. Y.

Joseph O. Carson,

222 East Michigan Street,

Indianapolis, Indiana.

Thomas E. Kerwin,

15 Broad Street,

New York, N. Y.

Of Counsel for Defendant The United Brotherhood of Carpenters and Joiners of America.

Offense:

Violation of Sherman Anti-Trust Act, 26 Stat. 209, Section 1 (15 USCA, Section 1), by conspiracy to restrain interstate trade and commerce in mill work and patterned lumber.

Date of Judgment:

December 20, 1941.

Brief description of judgment and sentence:

Conviction pursuant to jury verdict of combining and conspiring to restrain interstate trade and commerce in mill work and patterned lumber in violation of the Sherman Anti-Trust Act, 26 Stat. 209, Section 1 (15 USCA, Section 1), for which appellant was sentenced to pay a fine of Five Thousand (\$5,000.00) Dollars, lawful money of the United States of America.

Name of prison where now confined, if not on bail:

None, appellant sentenced to pay fine as, aforesaid. [1102]

We, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned on the grounds set forth below.

Dated: December 22nd 1941.

THE UNITED BROTHER-
HOOD OF CARPENTERS
AND JOINERS OF AMER-
ICA, APPELLANT,

By WM. E. HUTCHESON,

General President. [1103]

Grounds of appeal:

1. That the facts stated in the indictment do not constitute a public offense.
2. That the facts alleged in the indictment fail to state a violation of the Sherman Anti-Trust Law.
3. That the indictment is defective in the particulars specified in the demurrer of this appellant.
4. That the Court erred in overruling the demurrer of this appellant to the indictment.
5. That the Court erred in sustaining the demurrer to the plea of abatement filed by this appellant.
6. That the verdict and the judgment are each contrary to law.
7. That the Court erred in the decision of questions of law arising during the course of the trial and which rulings were duly excepted to by this appellant.
8. That the Court erred in denying the motion of this appellant to dismiss, based upon the in-

insufficiency of the indictment to state an offense, which ruling was duly excepted to by this appellant.

9. That the Court erred in numerous rulings upon the admissibility of evidence which were highly prejudicial to this appellant and excepted to by this appellant.

10. That the Court erred in denying the motion of this appellant to dismiss or for a directed verdict of acquittal upon the ground of the insufficiency of the evidence to sustain a verdict of conviction and which ruling was duly excepted to by this appellant.

11. That the Court misdirected the jury in matters of law and in instructing and refusals to instruct the jury, and such rulings were highly prejudicial to [1104] this appellant and duly excepted to by this appellant.

12. That the verdict and judgment are each contrary to the evidence.

13. That there is no evidence to sustain the verdict or the judgment.

14. That there is insufficient evidence to sustain the verdict and the judgment.

15. That the evidence in the case is at least as consistent with innocence as with guilt.

16. That there is a fatal variance between the charge of the indictment and the proof, in this, that the indictment alleges that defendant manufacturers agreed to accede to and did accede to wage scale demands of defendant unions in return for which defendant unions agreed to engage and have engaged in activities to restrain the sale and shipment

of mill work and patterned lumber in interstate commerce, and that in so agreeing and engaging defendant unions, including this appellant, were not acting to enforce or protect the right to bargain collectively nor in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, whereas, the proof is to the contrary and diametrically opposed to such allegations of the indictment.

17. That counsel prosecuting the case were guilty of prejudicial misconduct during the trial and before the jury in comments relative to the defendants who had ~~made~~ a plea of nolo contendere, and by reference to such as pleas of guilt; that the Court erred in its rulings and statements concerning such pleas over the objections of this appellant and to which appellant reserved exceptions. [1105]

18. That the Court erred in denying the motion of this appellant for a new trial.

19. That the Court erred in denying the motion of this appellant in arrest of judgment.

20. That this appellant was immunized from prosecution in the case by reason of the compulsory production of its private papers, books and records at the trial and the introduction thereof in evidence, over the objections of the appellant and to the overruling of which objections exceptions were reserved, and that such compulsory production and introduction of private papers, books and records violated the rights of this appellant under the Fourth and Fifth Amendments to the Constitution of the United States.

21. That the Court erred in denying the motion of this appellant for a bill of particulars.

HUGH K. McKEVITT,

CHARLES H. TUTTLE,

JOSEPH O. CARSON,

THOMAS E. KERWIN,

Attorneys for Appellant The
United Brotherhood of
Carpenters and Joiners of
America.

(Admission of Service)

[Endorsed]: Filed Dec. 26, 1941.

[1106]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS OF APPELLANTS LUMBER PRODUCTS ASSOCIATION, INC., ET AL.

Lumber Products Association, Inc., a corporation, Acme Manufacturing Co., Inc., a corporation, Eureka Sash, Door & Moulding Mills, a corporation, Carl Warden, Harry W. Gaetjen, Charles Monson, Fred Spencer, W. P. Holmes, J. A. Hart, Charles Gustafson and Christian A. Wilder, appellants in the above entitled cause, file the following assignment of errors of which they complain, and upon which they will rely in the prosecution [1107] of the appeal in said cause, from the respective judgments of this court entered against them on December 20, 1941:

1. The court erred in overruling the demurrer filed by defendants Lumber Products Association, Inc., a corporation, Acme Manufacturing Co., Inc., a corporation, Eureka Sash, Door & Moulding Mills, a corporation, J. A. Hart (under the name of J. A. Hart Mill & Lumber Co.), Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, W. P. Holmes (under the name of W. P. Holmes Mill & Cabinet Shop), Carl Warden, Harry W. Gaetjen, Charles Monson and Fred Spencer to Count One of the indictment.

2. The court erred in denying the motions of defendants Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, and Sage & Wilder, a partnership, to quash Count One of the indictment.

3. Count One of the indictment does not state facts sufficient to constitute any offense by any of these appellants against the United States, either under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, or otherwise.

4. The court erred in rendering judgment against and imposing sentence on each of these appellants, because Count One of the indictment fails to state facts sufficient to constitute an offense by any of these appellants against the United States, and because the demurrers heretofore filed by these appellants to Count One of the indictment should have been sustained.

And appellants Christian A. Wilder and Charles

Gustafson further assign the following errors of which they (but not the other appellants named above) will complain, and upon which they [1108] will rely, in addition to the foregoing errors, in the prosecution of said appeal.

5. The court erred in denying the motions of Christian A. Wilder and Charles Gustafson to quash bench warrants, to vacate order for issuance thereof, and to discharge bail.

6. The court erred in overruling the plea to the jurisdiction filed herein by Christian A. Wilder and Charles Gustafson.

7. The court erred in overruling the demurrer of Christian A. Wilder and Charles Gustafson to Count One of the indictment.

8. The indictment did not indict or name as defendants either Charles Gustafson or Christian A. Wilder.

9. The court erred in rendering judgment against, and in imposing sentence on, Christian A. Wilder and Charles Gustafson, because, in addition to the reasons stated in assignment No. 4 above, neither Charles Gustafson nor Christian A. Wilder had been indicted by or named as defendant in the indictment, and no charge had been brought against either of them.

10. The court erred in rendering judgment against, and in imposing sentence on, Christian A. Wilder and Charles Gustafson, because (1) if Christian A. Wilder was indicted, it was only through the indictment of Sage & Wilder, and if Charles Gustafson was indicted, it was only through the

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indictment of Brannan Street Planing Mill, and
(2) the indictment was dismissed against Sage &
Wilder and against Brannan Street Planing Mill
on November 6, 1941.

Wherefore, said appellants, by reason of the er-
rors aforesaid, pray that the judgments and sen-
tences against [1109] and upon them, under the
indictment herein, may be reversed and held for
naught.

Dated: February 20, 1942.

JAMES M. THOMAS,
MAURICE E. HARRISON,
MOSES LASKY,
BROBECK, PHLEGER &
HARRISON.

Attorneys for Appellants
Named Above.

Due service and receipt of a copy of the within
is duly admitted this 20th day of February, 1942.

TOM C. CLARK,
WALKER M. LEHMAN,
Attorneys for Respondent.

[Endorsed]: Filed Feb. 20, 1942.

[1110]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS OF APPELLANTS BOORMAN LUMBER COMPANY, ET AL.

Boorman Lumber Company, Hogan Lumber Company, Loop Lumber & Mill Company, Smith Lumber Company, a corporation, Tilden Lumber Company, a corporation, E. K. Wood Lumber Company, a corporation, Zenith Mill & Lumber Company, a corporation, Eureka Mill & Lumber Co., a corporation, and Wood Products, Inc., a corporation, appellants in the above entitled cause, file the following assignment of errors of which they complain, and upon which they will rely in the prosecution of the appeal in said cause, from the respective judgments of this court entered against them on December 20, 1941: [111].

1. The court erred in rendering judgment against and imposing sentence on each of these appellants because Court One of the indictment fails to state facts sufficient to constitute an offense by any of these appellants against the United States.

Wherefore, said appellants, by reason of said errors aforesaid, pray that the judgment and sentences against and upon them, under the indictment herein may be reversed and held for naught.

Dated: February 23rd, 1942.

MORGAN J. DOYLE,

Attorney for Appellants

Named Hereinabove.

1440 *Lumber Products Assn., Inc., et al.*

Service of the foregoing Assignment of Errors this 23rd day of February, 1942 is hereby acknowledged.

JOSEPH T. MURPHY,
Special Attorney Anti-Trust
Div.

[Endorsed]: Filed Feb. 23, 1942.

[1112]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS OF APPELLANTS D. N. EDWARDS, NELS E. NELSON, ROBERT W. SHANNON, AND ANDREW NELSON.

D. N. Edwards, Nels E. Nelson, Robert W. Shannon, and Andrew Nelson, appellants in the above entitled cause, file the following assignment of errors of which they complain, and upon which they will rely in the prosecution of the appeal in said cause, from the respective judgments of this court entered against them on December 22, 1941:

1. The Court erred in rendering judgment against and imposing sentence on each of these appellants because Count One of the indictment fails to state facts sufficient to constitute an offense by any of these appellants against the United States.

Wherefore, said appellants, by reason of said errors aforesaid, pray that the judgments and sen-

tences against and upon them, under the indictment herein may be reversed and held for naught.

Dated: February 23rd, 1942.

MORGAN J. DOYLE

Attorney for Appellants
named hereinabove.

Service of the foregoing praecipe this 23rd day of February, 1942, is hereby acknowledged:

JOSEPH F. MURPHY

Special Atty. Anti-Trust Div.

[Endorsed]: Filed Feb. 23, 1942. [1114]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS BY CERTAIN
UNION DEFENDANTS AND APPELLANTS.

Come now the defendants and appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550; J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil H. Ovenberg, Dave Ryan, W. L. Wilson and Charles Roe, and specify that in the proceedings before the District Court manifest errors occurred to the prejudice, and to the prejudice of each of them, through rulings to each of

which they duly excepted, it having been stipulated between the parties and understood with the Court at the trial as follows:

"Mr. Howard: May we have an exception?

"The Court: Yes, I am willing to let it be under- [1115] stood that an exception will be noted to every ruling of the Court, so that you won't have to ask me that question every time. Is that agreeable to you?

"Mr. Howard: Yes..

"Mr. Faulkner: Does the Government acquiesce in that statement?

"The Court: I say I am willing that the record should show that an exception has been made to every ruling made in this case on behalf of each and every defendant.

"Mr. Faulkner: That is agreeable to Counsel for the Government?.

"Mr. Howland: That is agreeable to the Government.

"The Court: You will understand that there is no necessity of voicing any exception whatever;"

that they severally assign the following errors and by this reference incorporate therein the exception taken and reserved by the foregoing stipulation as though quoted separately in each assignment to which the stipulation is applicable:

1. The Court erred in overruling the Demurrer of these appellants to the indictment in that the indictment fails to state facts constituting a public offense against these appellants or any of them.

2. The Court erred in denying the motions of these appellants to dismiss based upon the insufficiency of the indictment to state an offense.

3. The Court abused its discretion in denying the motion and demand of these appellants for a Bill of Particulars in that the indictment is so general and uncertain as to the complicity and relation of each defendant that the particulars demanded were necessary to enable them to properly prepare and present their defense.

4. The Court erred because of the insufficiency of [1116] the evidence in denying the motions of these appellants made at the conclusion of the plaintiff's case, and repeated at the close of the case, to dismiss or for a directed verdict of acquittal, and made upon the grounds:

That there was insufficient evidence to show a violation of the Sherman Act (26 Stat. 209) by these appellants, or any of them; and

that the evidence affirmatively showed the appellants were acting in connection with or as a result of a labor dispute; and any acts shown in the evidence were immunized by the Clayton Act (38 Stat. 730, Sec. 6-20) and the Norris-LaGuardia Act (47 Stat. 29); and—

that plaintiff failed to prove the allegations of Paragraph 29 of the indictment referring to the lack of a labor dispute and that the unions were not carrying on legitimate objectives of labor; and

that as to each appellant there was a lack of

any clear proof that he or it participated in, authorized or ratified any unlawful act; and that there was no proof of an unlawful intent on the part of any appellant.

5. There is insufficient evidence to sustain the verdict and judgment and the verdict and judgment are each contrary to the evidence in that it affirmatively appears therefrom that all acts and conduct of these appellants was lawful and proper under the Clayton Act (38 Stat. 730, Sec. 6-20) and the Norris-LaGuardia Act (47 Stat. 29).

6. There is a fatal variance between the charge of the indictment and the proof, in this, that the indictment alleges that defendant manufacturers agreed to accede to and did accede to wage scale demands of defendant unions in return for which defendant unions agreed to engage and have engaged in activities [1117] to restrain the sale and shipment of millwork and patterned lumber in interstate commerce, and that in so agreeing and engaging defendant unions, including these appellants, were not acting to enforce or protect the right to bargain collectively nor in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, whereas, the proof is to the contrary and diametrically opposed to such allegations of the indictment, and shows without conflict that appellants, and each of them, were acting in furtherance of their collective bargaining rights and in the course of legitimate labor disputes as to

wages, hours and working conditions and to promote legitimate objectives of labor.

7. The Court erred in permitting the witness, Lee Moffett, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"I know Mr. D. N. Edwards. I met him twice, I believe. I met him first in Oakland, as I recall it, in September, 1937, and had a conversation with him at that time.

"Mr. Routzohn: We object, your Honor, as incompetent.

"Mr. Burdell: Mr. Edwards is a defendant, your Honor.

"Q. Did you have a conversation with Mr. Edwards at that time?

"A. Yes, I did.

"Q. What was the subject matter of the conversation?

"Mr. Routzohn: We object, if your Honor please—

"The Court: Overruled.

"Mr. Routzohn: In the first place, that calls for a conclusion; what was the subject matter.

"The Court: What was said between you?

"Mr. Routzohn: We object to that.

"The Court: Overruled.

"Mr. Faulkner: My objection is more than that [1118] stated by Judge Routzohn. We object on the ground it is incompetent, irrelevant and immaterial, and not binding upon the defendant here on trial, and no foundation laid,

7 in this, that there is no evidence in this case that a conspiracy of any kind, character or description existed between the witness on the stand and any defendant in this case, nor is there any showing of any nature in this case that the relation of Mr. Edwards was such that a conversation with this witness could be introduced other than hearsay as to these defendants.

"The Court: Does anybody wish to add anything?

"Mr. Tobriner: I wish to object on the further ground that there is no statement of the place where the conversation occurred, the time, or the parties present.

"The Court: Any further objections from anybody? Overruled.

"Mr. Faulkner: Exception. Your Honor, I presume—

"The Court: It goes to all the defendants, it is understood.

"Mr. Faulkner: Yes.

"The Court: It was understood in the beginning. It is still the understanding, isn't it?

"Mr. Routzohn: I presume so, your Honor."

"We discussed the use and distribution of lumber in the Bay area. I introduced myself as a representative of the Western Pine. Mr. Edwards took me through his plant and showed me his operations—his various ma-

chines. During that trip around the plant, he described his operations and brought up the subject of competition from the sawmills in regard to his business. He was manager of the Oakland Planing Mill at that time and he brought up the competition and he was more or less antagonistic toward the fact that sawmills were shipping lumber into the Bay area. I don't re- [1119] call the exact words. I couldn't repeat exactly what he said, because that happened some time ago, but I recall the substance to a certain extent. The subject was the discussion of competition between the Bay district planing mills and sawmills in the Northwest.

"Q. What did Mr. Edwards say about that?

"Mr. Rontzohn: We object on the ground that it is incompetent, irrelevant and immaterial what he may have said about competition.

"The Court: Overruled.

"Mr. Rontzohn: From the sawmills in the Northwest.

"The Court: Overruled.

"Mr. Rontzohn: We object because it is not binding on any of our defendants unless a conspiracy is shown and there has been no conspiracy shown.

"The Court: A conspiracy will have to be shown or it won't be binding on anybody.

"Mr. Burdell: It is offered subject to that connection, your Honor.

"The Court: I understand that. Have you fully answered the question? Read the question."

"He said he was opposed to the sawmills shipping certain items into the Bay area. I didn't say very much of anything, because I was listening. I recall just the substance of his statement. I couldn't repeat words, but at that time his plant was rather quiet and we mentioned that, and he said that that was the reason that there was slack business in the Bay district, because the sawmills were shipping lumber in here in competition such that they could not compete with it locally. At that meeting that seems about all that was discussed." [1120]

8. The Court erred in permitting the witness, Lee Moffett, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"I met Mr. Edwards again a week or two later in the Ray Building in Oakland. Besides us, there was one other gentleman there. I believe he was secretary of the Retail Dealers' Association. I met Mr. Edwards in this gentleman's office."

"Q. What was said at that meeting, Mr. Moffett, by you and by Mr. Edwards, in substance?"

"Mr. Faulkner: The same objection, your Honor, as to the last conversation. (Such objection is quoted in full in assignment number"

7 and by this reference the grounds of objection are incorporated herein).

"The Court: Overruled.

"Mr. Edwards took me into his private office and we talked a while, and he explained the reason for having this office as well as an office at his place of business which was the Oakland Planing Mill, and he told me the reason he maintained this office in the Ray Building was it was a place to negotiate with the various unions and their officials, and maintain relations with his association of Millwork Operators. He told me the nature of these negotiations that they had this association of Millwork Operators and were in a position to negotiate with the unions and receive certain concessions in return for their promise of obtaining more work for the local millmen; that by excluding certain items of lumber from the sawmills [1121] they would be in a position to hire more men in the Bay district, and the object of his office in the building was to control these various restrictions and to contact and negotiate with the union officials. He said that it had been quite successful and that he expected in a short time they would be able to extend these restrictions to cover all items of millwork, also surfaced lumber and molding, knotty pine paneling and items of that nature, would not—other items are excluded from coming into the Bay district from the sawmills."

9. The Court erred in permitting the witness, Louis Wine, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"It was a meeting in the office of the Lumber Products Association. Approximately 18 were in attendance. Mr. Gaetjen addressed the meeting.

"Mr. Zirpoli: I am now offering this as to all defendants in the case.

"Mr. Faulkner: We object to anything that happened at that meeting as hearsay, immaterial, irrelevant, and incompetent, and not showing that that is an act or declaration pursuant to or in furtherance of the conspiracy, a meeting of indicted defendants who are not before the Court, in the presence of two Department of Justice Agents investigating a case, and comes within the rule that acts or declarations of a person to be binding on a co-defendant must be acts or declarations pursuant to and in furtherance of a common design or conspiracy, an act or declaration of a lot of men in the presence of Department of Justice Agents could not come within that category.

"Mr. Zirpoli: We will connect this up and show that it was a part and parcel of the conspiracy and in [1122] furtherance thereof.

"The Court: Overruled.

"Mr. Zirpoli: Q. You have told this was a

meeting at the Lumber Products Association.

"A. Yes.

"Q. You attended this meeting and Mr. Sherman was present also? A. Yes.

"Q. Will you tell us what Mr. Gaetjen said at this time, as you recall it?

"Mr. Faulkner: The same objection.

"The Court: Yes, overruled.

"A. Mr. Gaetjen said the meeting was called for the purpose of discussing a demand or request made by the Millmen's Union for an increase of salary, that they were asking for \$9 a day and a 7-hour day. Mr. Gaetjen went on and stated that there was a verbal agreement between the Millmen and the Association to exclude from the San Francisco Bay area millwork that had not been in accordance with the current wage scale, and he thought that the unions had not lived up to their part of the agreement, and he also brought out in his exact words, the purpose of the agreement was to create a sort of a Chinese Wall around the San Francisco Bay area, but the unions had not been vigilant in keeping this lumber out, and he thought they would not be entitled to any increase in salary, and Mr. Gaetjen stated 'We are not in a position to pay them additional wages.'

"Mr. Faulkner: I ask the Court at this time to limit that testimony in such a manner that it cannot bind any employers or any per-

son in court.

"The Court: I will limit it subject to connecting it up.

"Mr. Zirpoli: I expect to connect it up.

"The Court: If it is not connected up it is subject to a motion to strike. Go ahead."

[1123]

10. The Court erred in permitting the witness, C. B. Sherman, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"Q. Will you tell us what Mr. Gaetjen said at that meeting?

"Mr. Faulkner: We object to that as immaterial, irrelevant, and incompetent, hearsay as to the defendants on trial, and not within the issues of this case, and no foundation laid, in that there is no evidence that any act of declaration of Mr. Gaetjen at that time was pursuant to or in furtherance of the charge laid in this indictment.

"The Court: Overruled.

"Mr. Zirpoli: Q. Now, will you tell us what Mr. Gaetjen said at that time?

"A. Mr. Gaetjen called the meeting to order, and as I recall, he said—the first thing he did was to introduce Mr. Wine and myself as members of the F.B.I., and then stated the purpose of the meeting was to determine whether or not the Association would go on record as approving a new union demand for increased wages. He said that, as the mem-

bers there would recall, they had an agreement to increase the wage scale in the past, and that they had agreed to do it on the condition that the union would cooperate with them in keeping the millwork products out of, that is, the products from Washington and Oregon out of the Bay area, and he said that under the agreement that they had made the products from those two particular States, Washington and Oregon, would not be worked on by the union when they were sent in here, and that, in effect, it would build a sort of Chinese Wall around the Bay area. He did state, however, that he was going on record as not being in [1124] favor of the new wage increase, due to the fact that the unions had not carried out their end of the previous agreement that he talked about, that instead of keeping the products out and building a sort of Chinese Wall around this area they had made such demands on the Lumber Association here, the Lumber Products Association, that it built a sort of Chinese Wall around the Bay area, and that he wanted their expression of opinion as to whether or not they would be in favor of the wage increase.

"That is about all I recall."

11. The Court erred in permitting the witness, James Stewart, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"A. One day I had placed an order through

our buyer in San Francisco with an outfit to get in a lot of sash and doors so we could have a surplus stock, and he placed the order and told me the mills would deliver it on such and such a date, and I received a telephone call stating that it had been heard that I had purchased merchandise coming in other than from the five counties.

"Q. Just a moment, do you recall when this telephone call occurred?

"A. In the morning, but not what date.

"Mr. Routzohn: We object unless this telephone call was with one of the defendants or somebody connected with the defendants.

"Mr. Burdell: I have not asked for the conversation.

"Q. Do you know who called?

"A. The party on the other end of the line said they were from the Mill Workers' Union on Webster Street, in Oakland—Mill Workers' Union. I won't say Webster Street. He said that he represented the Mill Workers' Union and had understood [1125] that we had a ear of sash—

"Mr. Routzohn: I object to that.

"The Court: Overruled.

"Mr. Routzohn: We are objecting on the ground that there is nothing there to show that it was somebody from the Union, it is merely a telephone conversation.

"The Court: Q. Was it a man who rep-

resented himself to be a representative of the Union? A. He did.

"The Court: Overruled.

"Mr. Burdell: Q. What was the conversation, Mr. Stewart?

"Mr. Rontzohn: When?

"Mr. Burdell: Q. When did this telephone conversation occur?

"A. In the early part of 1939; when I ordered these through Mr. McNamar.

"Q. Do you recall the month?

"A. No, I do not.

"Q. What was the conversation?

"A. This party called up and represented himself to me as someone from the Union in Oakland, and stated that they had heard we had placed an order with an out-of-the-five counties mill, and if they came in they would immediately picket our place, and not to bring it in to save ourselves any trouble.

"Q. Was there any further conversation on the phone?

"A. Not with that party, except, well, I did say, "What are you talking about? And they said, "You know what I am talking about.

"Q. Is that all? A. That was all.

"Q. What did you do?

"A. I called up Mr. McNamar and told him to cancel this order.

"Mr. Rontzohn: We object to what he did with Mr. McNamar.

"The Court: Overruled. [1126]

"Q. I told Mr. McNamar to cancel the order with the company that he had ordered the sash and doors, that the Union had heard of it and prohibited us from taking it or they would picket us.

"Mr. Routzohn: We ask that the conversation be stricken out and the jury instructed not to regard it, and to pay no attention to it.

"The Court: Denied."

12. The Court erred in excluding the testimony on cross examination of plaintiff's witness, John Carriek, as follows:

"I discovered from experience "hot cargo" or "hot lumber" is something I could not buy. It meant something you can't bring in.

"Q. You couldn't bring it in because there was a dispute on, a war on labor between the C.I.O. and the Carpenters' Brotherhood, which was an A. F. of L. organization? Didn't you understand that?"

"Mr. Zirpoli: I object to that as irrelevant, and immaterial. There is no issue involved in such a war.

"The Court: Sustained.

"Mr. Routzohn: That is all."

13. The Court erred in excluding the testimony on cross examination of plaintiff's witness, E. W. Yates, as follows:

"That material we bought from mills at Portland, the Jones Lumber Company, and a little Company at The Dalles, Oregon.

"Q. Did you know at that time and do you know now whether or not some of those companies were organized under the CIO?

"Mr. Zirpoli: I object. I have not interposed this [1127] objection, but it seems to me it is irrelevant and immaterial.

"The Court: I do not think it makes any difference whether it was the CIO or AFL. Sustained.

"Mr. Routzohn: Our point is, of course, if it did not bear the union stamp of the Carpenter Brotherhood of the AFL that we had a perfect right to keep it out.

"The Court: Objection sustained."

14. The Court erred in excluding the testimony on cross examination of plaintiff's witness, Willard B. Jefferson, as follows:

"Mr. Routzohn: Q. Was it non-union lumber that you purchased at that time?

"Mr. Clark: I object on the same grounds. (Immaterial, irrelevant and incompetent.)

"A. As far as I know, it was.

"The Court: Sustained."

15. The Court erred in excluding the testimony on the cross examination of plaintiff's witness, Emory J. Nutting, as follows:

"It was the purpose of these negotiations to attempt to arrive at some agreement. I would say my best recollection as to the period of time covered by the negotiations was 3 months.

"Q. Three months. During all of that time, Mr. Nutting, there was a dispute on, was there not, between the unions on the one hand and the mill owners on the other as to the rate of wages?

"Mr. Burdell: Just a moment. That calls for a conclusion of the witness and is improper cross examination and immaterial.

"The Court: Sustained.

"Mr. Rontzohn: Q. Was there any other dispute on at that time? [1128]

"Mr. Burdell: Same objections

"The Court: Sustained.

"Mr. Rontzohn: I haven't asked my question yet.

"The Court: Well, the question is objectionable so far as it has gone. Was there any other dispute?

"Mr. Rontzohn: Q. What were these negotiations that lasted three months?

"Mr. Burdell: Objected to.

"The Court: It is quite clear the negotiations related to wages and with reference to an agreement and it was signed. Isn't that quite plain? Why take up time cross examining on that subject?

"Mr. Rontzohn: If your Honor thinks I am taking too much time, I will desist.

"The Court: Well, I think it is quite clear what you are trying to show by this witness.

"Mr. Rontzohn: Yes. Your Honor in the very beginning told us we would have to estab-

lish that there was a labor dispute. That is exactly what I am trying to show.

"The Court: You have asked him if there was a labor dispute, which you have no right to do.

"Mr. Rontzohn: The witnesses have been asked for many a conclusion at this trial, I have noticed.

"The Court: That may be so."

16. The Court erred in admitting, over the objection of appellants, Exhibit 161, as follows:

"Minutes referred to are U. S. Exhibit No. 160 for identification. Letter marked U. S. Exhibit No. 161, for identification is a letter addressed to Building Trades Employers' Association, to my attention.

"Mr. Burrell; I understand that it is stipulated that this is Mr. Ennes' signature, and I want at this [1129] time to offer this letter in evidence.

"Mr. Faulkner: We object to it as immaterial, irrelevant, and incompetent, and hearsay as to the defendants, dividing the objection as to Mr. Ennes as an individual, and any other defendant represented by it, and upon the further ground that there is no foundation laid that communications between a member of the Building Trades Employers' Association is a part or parcel of the conspiracy charged here. In other words, there is nothing illegal about all of the employers

in San Francisco having an organization among themselves for their own protection, and the things that happen in that organization are not part and parcel of the conspiracy charged in this indictment, and could never be; and we submit that it is absolutely hearsay as to the defendants. Of course, as to Mr. Ennes, individually, it is not hearsay, but it would be immaterial as to him and hearsay as to all other defendants in the case.

"The Court: Overruled.

"Mr. Routzohn: The same objection.

"The Court: Overruled.

"Cross-Examination

"By Mr. Faulkner:

"I am the James L. McNally referred to in the paper I identified. The J. G. Ennes referred to in the letter is Mr. Ennes sitting at the table. I received the letter in the regular course of business. No reply was made to it.

"Thereupon, the letter was read, as follows,
By Mr. Faulkner:

"Cabinet Manufacturers Institute of California, Northern Division, 441 Call Building, San Francisco, July 20, 1938. [1130]

"Building Trades Employers Association, 666 Mission Street

San Francisco

"Attention Mr. James L. McNally, Secretary

"Gentlemen:

“We are handing you a copy of the Arbitration Board Award. The purpose of this letter is not to deal in retrospect but to be forward looking.

“The Employer member of the Board and their Technical Advisor signed the award as dissenting to the rate of wage. This is not to be in any sense understood as meaning that the Employers are not going to carry out the award in spirit and in fact. They are; and have signed a contract embodying the Award.

“Arbitration is a medium of adjusting economic differences between the Employers and Organized Labor to the end that the Employer, Employee and the Public be saved the consequences of industrial strife.

“We have subscribed to that policy. The B.T.E.A. agreement with organized Labor as to arbitration, of which we, as members, availed ourselves, is in our opinion, epochal as a mass arbitration agreement.

“Neither in opening argument nor in rebuttal could we hold that the employees of Mill and Cabinet Shops were less skilled than certain other crafts of the construction industry receiving substantially higher rates of wage established by negotiation and arbitration. Nor could we give factual reasons for the present spread between the carpenter's wage as compared to the past spread. Excepting that since 1921 we have had to face in our bidding eco-

economic horizons having lower rates of wages than those set up by our agreement and to be competitively sound, our rate of wage should not be appreciably higher than that [1131] of the competition we have to meet.

"The Arbitration Board has handed down an Award of \$9.00 and \$8.00, which is the all time high in rate and the highest in percentage when compared to the carpenters' since 1921. The Arbitration Board has also said:

" 'Maintenance of Fair Labor Conditions.'

" 'It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interests of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement.'

"The rate of wages and the paragraph referred to are reciprocal, and that we may live up to the terms of the award we ask for the cooperation of all responsible parties.

"This award, and in our opinion, all recent awards and agreements point clearly to the necessity of the B.T.E.A. functioning as a repository of certain factual economic experiences rather than opinions.

"We expressed our viewpoint along this line at the last meeting, so will not go further into the matter here.

"We wish to emphasize that this letter is not to be in any sense construed as critical of the award of the Arbitration Board. We hold the Board prevented strife, once embarked upon, the consequences of which are limitless. The neutral Chairman measured to the full stature of what we deem a neutral Arbitrator should be and the respective Arbitrators and Technical Advisors of the Employers and [1132] Employees used the 'rule of reason.'

"We take this occasion to thank the B.T.E.A. for the material assistance they gave us in this matter.

"Very truly yours,

"CABINET MANUFACTURERS INSTITUTE OF CALIFORNIA NORTHERN DIVISION,

By J. G. ENNES,

Manager."

17. The Court erred in permitting the witness, William B. Hague, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"Documents produced by the witness were marked U. S. Exhibit No. 163 for identification,—longhand notes or rough notes of an Industrial Relations Committee meeting made by me, Mr. Hilp and Mr. Tait and Mr. Edwards were present.

"Mr. Faulkner: The Industrial Relations Committee are not parties to this case; we object to what happened at the Industrial Relations Committee, there is no foundation laid that that was a meeting pursuant to or in furtherance of the charge in the conspiracy, and it is hearsay as to the defendants who were not present at the meeting.

"The Court: Overruled; proceed, please.

"Mr. Edwards, according to these notes and according to my memory of the meeting, the Committee wanted to find out what was the attitude of the East Bay Planing Mills on the arbitration award, and the East Bay was not going along on it, and Edwards was asked to explain why and as I recall he said they were not parties to the arbitration and explained the position of the East Bay mill owners with respect to the mills in San Francisco, and that was what the Committee was after, they did not want to have one situation in San Francisco and another situation [1133] in East Bay. They wanted to find out what was the trouble in the East Bay that they could not go along. Edwards explained at length. These notes do not cover Mr. Edwards' explanation. Mr. Edwards explained that the position of the East Bay was different to the San Francisco mills, because he claimed the large mills in the East Bay shipped their products all over Northern California

and also that they were in competition with mills that were clearly outside of the immediate Bay area. They were large mills—I forget the name, but there were two or three he mentioned not in Alameda County who were absolutely competitive with Alameda County, and that Alameda County must be in a position where it could meet that competition to successfully keep their mills going. To the best of my recollection he thought Article VIII a very bad clause, that they would make a lot of trouble.”

18. The Court erred in denying the motion of appellants to strike the testimony of plaintiff's witness, Edward A. McCreedy, as follows:

“They told us they wanted the order cancelled because they had been told by the Unions they would not install it. That was on a teletype message to me from our New York manager. We also have a letter from the Penney Company. No one from the Penney Company told me why that installation was not made.

“Mr. Rontzohn: We ask, your Honor, all of this conversation be ruled out as being incompetent, irrelevant and immaterial and hear-say.

“The Court: Motion is denied. * * *

“I talked to Mr. Wieland about the Penney job, in Grand Rapids, when he was there. The labor problem must [1134] have been dis-

cussed. He told me it would be necessary to cancel the job only because of the fact that they would not install it here. That is at least one reason for cancellation.

"Mr. Routzohn: Your Honor, we ask that all this be stricken out. I objected to it once before and your Honor did overrule me, but again I would like to make the motion so we can get it in the record.

"The Court: Very well.

"Mr. Routzohn: I ask all this be stricken out as to what somebody in his own concern told him, as being purely hearsay and not binding in any way on these defendants.

"The Court: Denied."

19. The Court erred in admitting in evidence, over the objection of appellants, and refusing to strike on motion of appellants, Exhibit 171, as follows:

"Exhibit 171, for identification, is a letter from Mr. Lewis of the construction department of J. C. Penney Company of New York City, addressed to the Manager of our New York office, confirming the telephone conversation as to cancellation of this order. It is from J. C. Penney Company to our Company in regard to the Penney job.

"Mr. Burdell: I offer this in evidence.

"Mr. Faulkner: We object to it, your Honor, as hearsay.

"The Court: Overruled.

"Mr. Routzohn: Same objection.

"Mr. Faulkner: May I call your Honor's attention particularly that this is a letter from a man named Lewis of the Penney Company to the Grand Rapids Company quoting a telegram from somebody else.

"That is all hearsay as to the defendants. [1135]

"Mr. Burdell: Well, it is the telegram from the J. C. Penney Company, the telegram is quoted.

"The Court: Overruled.

"(The letter was marked 'U. S. Exhibit No. 171.')

"Mr. Burdell: I will read it, if I may, at this time.

"The Court: Read it.

"Mr. Burdell: On the letterhead of J. C. Penney Company.

"J. C. Penney Company Incorporated, 330 West 34th Street, New York N. Y.

September 17, 1938

"Grand Rapids Store Equipment Company
420 Lexington Avenue
New York, N. Y.

Attention:—Mr. Lockwood

"Gentlemen:

"Concerning our telephone conversation, we are pleased to quote you verbatim the telegram received from our District Office in ref-

erence to the South San Francisco store fixtures:—

Union served notice they will not handle Grand Rapids or Weber fixtures for South San Francisco store. Insist fixtures must be made under same conditions wages as Frisco area regardless union stamp.

"We trust this is the information you desire.

Yours very truly,

J. C. PENNEY COMPANY, Inc.

H. C. Lewis,

Construction Department.

"And the signature "Harold C. Lewis."

"Mr. Routzohn: Your Honor, I move all of this be stricken out for the reason that it is sheer hearsay and that the defendants in this case have no opportunity [1136] in the world to answer that sort of an assertion:

"The Court: Denied.

"Mr. Routzohn: By "opportunity," I would like to correct my statement, that we have no way of meeting or ascertaining who made the statement or of tracing it down in order to contradict anything that is stated in there.

"The Court: Well, your client knows whether or not that statement is true.

"Mr. Routzohn: How could he know, if the Court please?

"The Court: Don't argue.

"Mr. Routzohn: We don't know who so-

licited for the Penney Company. We don't know who talked to a solicitor for the Penney Company. We have no way of ascertaining the basis of that statement or who had anything to do with it.

"The Court: All right. Your objection is overruled."

20. The Court erred in excluding the testimony on cross-examination of plaintiff's witness, H. P. Smith, as follows:

"I am employed by Unit-Built Company, one of the defendants in the case. Mr. Roselyn is the head of that company and handled the Grand Rapids line under a license. His directions to me are to press Grand Rapids equipment in the sales."

"Q. And in connection with those sales, you are unable to compete against local commercial fixture competition in this district; isn't that true?"

"Mr. Clark: I object to that as incompetent, irrelevant and immaterial."

"The Court: Sustained."

"Mr. Faulkner: Q. In connection with the work that you do for the Unit-Bilt people you bid, do you not, upon Grand Rapids articles?"

"A. We have to quote prices. [1137]"

"Q. You also quote prices on the same jobs for the Unit-Bilt people, don't you?"

"A. That is true."

"Q. Which is the lower?"

"Mr. Clark: Your Honor, we object to that—

"The Court: I don't see the materiality of it. Objection, sustained.

"Mr. Faulkner: Well, we offer to prove, your Honor, that the prices of the Unit-Bilt fixtures are constantly lower.

"Mr. Clark: Just a moment. I object to Mr. Faulkner stating what he offers to prove in the presence of the jury.

"The Court: You may proceed.

"Mr. Faulkner: We offer to prove by this testimony that the prices of the Unit-Bilt Company to the same customers where their prices are quoted and the Grand Rapids' are quoted, that the Unit-Bilt prices are constantly lower even when their instruction is to sell Grand Rapids goods.

"The Court: Let the ruling stand."

21. The Court erred in admitting in evidence, over the objection of appellants, Exhibit 177, as follows:

"Thereupon U. S. Exhibit No. 177 was identified as a request sent by the witness to the construction department to cancel the order of Grand Rapids.

"Mr. Clark: We will offer it in evidence.

"Mr. Faulkner: We object to that telegram from Mr. Christenson to his own boss on this subject matter as hearsay as to the defendants.

"The Court: Overruled.

"(The telegram was marked 'U. S. Exhibit No. 177.')

"Mr. Clark: I will read it to the jury, your Honor. [1138]

"The Court: Read it.

"Mr. Clark: 'Oakland, Calif., September 3, 1938.

"F. R. Hesser—J. C. Penney Co.

"330 West 34 St. NYK—

"Union served notice they will not handle Grand Rapids or Webber fixtures for South San Francisco store Vacaville fixtures okay insist fixtures must be made under same conditions wages as Frisco area regardless of union stamp. Consider having orders transferred to Unit Built union contacting me again answer Western Union—

E. M. Christenson.

22. The Court erred in admitting in evidence, over the objection of the appellants, a conversation with an unidentified person, as follows:

"The notice served by the union that they will not handle Grand Rapids fixtures was at a telephone conversation.

"Mr. Faulkner: I ask that go out.

"The Court: Yes. Who did you have the conversation with?

"A. Who called me? I don't know.

"The Court: Well, tell us all about the conversation.

"Mr. Faulkner: Just a moment. We ob-

ject to a conversation with an unidentified person as hearsay.

"Mr. Clark: We will identify him.

"The Court: Mr. Clark says he will identify the person.

"Mr. Clark: Q. Who did he say he was?

"A. He said he was a friend of the union, or he was speaking for the union and a friend of the Penney Company.

"Q. What did he say?

"Mr. Routzohn: I object; he is not answering the question. [1139]

"The Court: Overruled.

"Mr. Faulkner: A friend of the Penney Company.

"The Court: A member of the union.

"Mr. Faulkner: No, he did not say he was a member—

"The Court: Read the answer of the witness.

(Record read.)

"Mr. Faulkner: We object as hearsay and not binding—

"The Court: Overruled.

"Mr. Clark: Q. So it will be straight all around, what did he say when he talked to you?

"Mr. Faulkner: He already answered it.

"The Court: Overruled.

"He said what is stated in the wire—that is the matter of conditions that existed in the

Bay Area, whereby the union would not set fixtures that did not bear the stamp, and indicated the fixtures should come into the Bay Region under the same conditions and so forth that existed in Frisco. I said, "Well; we had these fixtures coming from Grand Rapids." He said, "Yes, we know all about that." "Those fixtures," I went on to say, "have a union label." "Yes, we know all about that, but they still would not comply with the regulations that we demand fixtures to be installed under in this area." Then I asked him about the Vacaville fixtures. He stated they were satisfactory because we owned these fixtures and the conversation ended by him stating he would contact me again."

23. The Court erred in excluding the testimony of defendants' witness, Joseph Louis Emanuel, as follows:

"Mr. Faulkner: Q. In the period from 1936 until 1940, June 26, the date of the return of this indictment, have you ever had any person, whether a union representa- [1140] tive or purporting to be a union representative, or a member of any union group, or of your own group, suggest to you where you should buy any lumber product in any form?"

"Mr. Burdell: Object to it as immaterial whether or not this witness has heard that.

"The Court: Sustained."

24. The Court erred in excluding the testimony of defendants' witness, Joseph Louis Emanuel, as follows:

"* * * Do you know, Mr. Emanuel, whether or not in 1935 that was the first occasion that organized labor, after a period of practically fourteen years was able to get a union contract with employers in this district?"

"Mr. Burdell: Objected to as immaterial.

"The Court: Sustained.

"Mr. Faulkner: I think it is material to show that organized labor was emerging.

"The Court: I think it is immaterial.

"Mr. Faulkner: Your Honor will not permit me to—

"The Court: No. I do not wish to consume too much time in listening to argument. I would like to have you put in the evidence as rapidly as possible.

"Mr. Faulkner: Don't you think that it is important in this case to show that there was a definite change?"

"The Court: I think that my ruling is correct and it stands. Proceed with the examination."

25. The Court erred in excluding the testimony of defendants' witness, W. P. Kelly, as follows:

"We obtained separate agreements from many of the cabinet shops who were not represented by Mr. Ennes.

"Q. Yes. Have you those contracts?"

"A. I have no doubt that they are on file in the Local Unions, or in the [1141] District Council.

"Mr. Carson, II: They have been brought in for identification but they have not been separated.

"The Court: Well, I think it is immaterial, anyhow; you are wasting time in producing them, gentlemen. If you wish to make a formal offer of them I will make a ruling now.

"Mr. Routzohn: Q. Can you tell us about how many there were that you obtained, contracts from people other than those represented by Mr. Ennes?

"Mr. Burdell: I object as immaterial and no foundation, and calls for his conclusions.

"The Court: I think he said no.

"The Witness: No, I did not say anything.

"The Court: Objection is sustained.

"Mr. Routzohn: We would like at this time, if your Honor please, to make a proffer of all the contracts that we brought in here at the instance of the Government.

"The Court: Well, produce them; find them and produce them.

"Mr. Routzohn: If I can prevail on the Clerk, here, to do that, your Honor, please.

"The Court: Well, I think you ought to assist the Clerk in doing that if you know what they are. Make the offer some other time.

"Mr. Routzohn: All right, sir. We can do that before this witness leaves.

"Q. Is that also true in the 1936 contract, that you obtained contracts from others than those represented by Mr. Ennes?

"A. Yes.

"Mr. Burdell: I ask the answer be stricken and I will also interpose the same objection. [1142]

"The Court: The answer may go out. Objection sustained.

"Mr. Routzohn: Q. The same question as to the Mill Owners represented by Mr. Edwards and Mr. Gaetjen, that is, the other Mill Owners, whoever they were, over here on this side of the Bay, did you obtain contracts with other mill owners that were not represented by them?

"Mr. Burdell: The same objection.

"The Court: Sustained.

"Mr. Routzohn: Now, if your Honor please, at some other time we would like to make that offer.

"The Court: Very well." * * *

"Q. I show you here some exhibits that have been produced. I am not going to introduce the exhibits, your Honor, but I would ask Mr. Kelly if he would indicate the firms that were unorganized in 1938, with contracts identical with the ones here in evidence. The firms are on the top of each one of these.

"Mr. Burdell: Do you mind if I look at them a minute?

"Mr. Faulkner: No.

"A. Atlas Stair-Building Company, that was one signed August 15, 1938.

"Q. Signed what date?

"A. August 15, 1938.

"Mr. Burdell: Do you have a list of those?

"Mr. Faulkner: They have been in and out of our possession, but they came in here at the trial.

"The Court: Why don't you make a list of them and you can save time.

"Mr. Faulkner: Suppose I read them off. There are really not very many.

"The Court: Very well, read off the names.

"Mr. Burdell: I am going to object to it, because I [1143] do not see any materiality, and I do not see any foundation laid.

"Mr. Faulkner: These came out of the Union's possession. They are original contracts, aren't they, Mr. Kelly?

"Mr. Burdell: I take it these will show these companies were unionized in 1938, but is there anything to show they were not unionized before?

"Mr. Faulkner: They may have had a contract before.

"Mr. Routzohn: Some of them did not get in until 1940.

"The Court: I cannot see that they are material. I asked you before to make a list of them and you can make your offer and I will rule upon it.

"Mr. Faulkner: I will read the names off, it will only take a short time. * * *

"Thereupon, the names of some forty firms with 1938 contracts were read.

"The Court: Are any of those firms whose names you have read corporations, partnerships, or individuals, defendants in this case now on trial?

"Mr. Burdell: One is, your Honor, possibly two that I know of. The Brannan Street Planing Mill and Eureka Sash, Door & Molding Company.

"The Witness: That is a different Eureka mill.

"The Court: Those are separate contracts made by the unions with persons who are in no way involved in the trial now before the Court?

"Mr. Faulkner: Yes, except that they signed the identical contract.

"The Court: Yes.

"Mr. Faulkner: And the testimony is offered for the purpose of showing that at the time, in conformity with [1144] the position taken by the respective sides, that paragraph 8 of the Arbitration Award, paragraph 2 of the Agreement, was to provide a condition of unionization of plants in this area. In other words, there was an attempt to unionize, and the only distinction between the contracts they ultimately entered into and the contract ac-

tually entered into, I would like to read into the record, it is only a line.

"The Court: Read it.

"Mr. Faulkner: Agreement for the purpose of promoting the mutual interest of the parties signatory hereto, between (blank), that is, between the various people whose names I have read and the Bay Counties District Council of Carpenters as follows:

"The wages, hours and working conditions of the Cabinet Makers, Carpenters and Millmen employed by the different firms by whom the agreement was signed—will be as stipulated in the agreements between the District Council of Carpenters, Millmen's Unions No. 42 and 550 and the Lumber Products Association, Inc. and the Cabinet Manufacturers Institute, Inc., Northern Division, which is as follows—

"and then the Exhibit 132—

"The Court: Are you going to read any more of that?

"Mr. Faulkner: No. In other words, Exhibit 132 is mimeographed and became a part of every agreement with these people.

"Mr. Burdell: I desire to move to strike everything that Mr. Faulkner has read, because it does not prove what he wants to prove it is immaterial.

"The Court: I think it is immaterial, it may go out. Do I understand you are going to offer these in evidence? [1145]

"Mr. Faulkner: No, I have completed my proof, I think it is relevant in this case. The Government says that paragraph operated to provide for a certain situation, and here are constant attempts to unionize other people. The position we have taken is that that paragraph had to do with the local condition where competitors of these people would be paying a different rate, and as long as that competition existed it is evidence by itself that these people were not unionized. I think it is within the issues of the case.

"The Court: Have you any motion that you wish to make?

"Mr. Burdell: Yes, I move to strike the whole thing on the ground it is immaterial, irrelevant, and incompetent, and no foundation laid, assuming facts in evidence and not within the issues of this case.

"The Court: The motion is granted. * * *

"Mr. Faulkner: Your Honor, at the time of the noon recess, Mr. Burdell had made an objection which your Honor sustained. In connection with that objection, one of the grounds stated was that a proper foundation had not been laid in identifying these papers. I don't want to pursue the matter any further in the light of the Court's ruling, but that would be a sound objection—in other words, I had not completed the identification of the documents. If Mr. Burdell will withdraw that and the rec-

ord will clearly show your Honor's ruling was based on the materiality, I won't have to devote any more time to it. I think that was your Honor's position, was it not?

"The Court: Yes.

"Mr. Faulkner: Will you withdraw that ground of your objection? [1146]

"Mr. Burdell: Well, my objection is based on the fact it is not material and also that no foundation as to materiality has been laid.

"Mr. Faulkner: Well, you did not mean that was not any foundation that these were original agreements that were entered into on the day they bore date?

"Mr. Burdell: No, that is not part of my objection.

"Mr. Faulkner: I think that clears it up.

"The Court: Yes."

26. The Court erred in excluding the testimony of defendants' witness, Emil H. Ovenberg, as follows:

"Q: Now, the 1936 agreement, then, resulted in an increase in the wage scale, did it not, to the employees? A. It did, yes.

"Q: What was the movement of living conditions at the same time?

"Mr. Howland: I object to that, if your Honor please, on the ground it is irrelevant and immaterial, and having nothing to do with the issues in this case.

"The Court: Sustained.

"Mr. Howard: If your Honor please, if I may have the privilege of this suggestion relative to the indictment, there is a charge here that there was some question of gift in the making of the scale. I think that we are entitled to all of the facts bearing on the question of how that scale was fixed."

27. The Court erred in excluding the testimony of defendants' witness, Emil H. Owenberg, as follows:

"Q. What is the scale for Millmen in Fresno? A. \$9 a day.

"Q. What is the scale in Vallejo?

"A. \$10.

"Mr. Burdell: I object to that and ask that it go out. [4147]

"The Court: Yes, it may go out. Objection sustained.

"Mr. Howard: If your Honor please, we will make an offer of proof, then, to include Stockton and Los Angeles, to show that the scale of Millmen at the present time is greater in all of those localities than here.

"The Court: The offer of proof has been made.

"Mr. Burdell: We object to the offer of proof on the ground that the wages and standards of living in localities other than the Bay Area are utterly immaterial and irrelevant.

"The Court: Sustained.

28. The Court erred in excluding the testimony of defendants' witness, Emil H. Ovenberg, as follows:

"Mr. Howard: Q. What is the existing Carpenters' wage scale? A. \$11 a day.

"Mr. Burdell: We object to that.

"The Court: Yes, that may go out. Objection sustained."

29. The Court erred in excluding the testimony of defendants' witness, Emil H. Ovenberg, as follows:

"Mr. Howard: Q. Are lumber handlers a part of your craft?

A. They belong to the same Brotherhood, they are members of the United Brotherhood of Carpenters and Joiners of America.

"Q. Are they skilled or unskilled workmen?

"Mr. Burdell: I object to that on the ground it is immaterial, irrelevant, and incompetent.

"The Court: Sustained.

"Mr. Howard: Q. Do you know the scale prevailing at the present time for lumber handlers in this locality?

"Mr. Burdell: I object to that on the ground it is irrelevant and immaterial to any issue in this case, [1148]

"The Court: Sustained."

30. The Court erred in excluding the testimony of defendants' witness, Emil H. Ovenberg, as follows:

"Q. Now, with reference to all your activities as a negotiator, or as a representative of your organization, or as an individual, were you acting with the intent to promote the interests of yourself and your organization?

"A. Sincerely and honestly——

"Mr. Burdell: I object to that and ask that the answer go out.

"The Court: Yes, it may go out.

"Mr. Burdell: I object to it as calling for the opinion and conclusion of the witness, and immaterial, irrelevant to any issue in this case.

"The Court: Sustained.

"Mr. Howard: If I may call to your Honor's attention, I believe that the question of intent is vital here, and exceedingly material. Your Honor will bear in mind paragraph 29 of the indictment, which has a direct bearing on this issue, in which the charge is made that these men were not intending to promote their own interest, or with an intent of promoting the objective of labor. I have cases here, your Honor.

"The Court: I have cases here, too. The ruling will stand.

"Mr. Howard: May I, in order that there be no question about the form of the question, then, make this offer of proof, that we offer to prove by this witness, who is a union negotiator or representative of the union in connection with the negotiation of the disputes with em-

ployers in the period of 1936 and again in 1938, that he intended only to act in promotion of his union de- [1149] mands and objectives. I wish to make that as an offer of proof.

"The Court: Any objection?

"Mr. Burdell: Yes, we object to that as having no probative value at all, any question of intent is immaterial to this case, and further the intent which is included in this offer is not consistent with any such intent as may be necessary to sustain the allegations of the indictment.

"The Court: Objection sustained.

"Mr. Faulkner: Your Honor is not ruling intent and motive does not enter into a conspiracy charge?

"The Court: Absolutely, that is what I am ruling, in a conspiracy charge.

"Mr. Faulkner: That intent does not enter into it?

"The Court: The intent is immaterial here at this time. That is what I am ruling.

"Mr. Faulkner: Very well."

31. The Court erred in excluding the testimony of defendants' witness, David H. Ryan, as follows:

"I pointed out to Mr. Williams that Walter Jacoby was there doing some work, and he said he was going to install Grand Rapids Fixtures, and we did not like Walter Jacoby, who had a habit of getting laborers and give them

a pair of overalls and some tools and get him on the job and do the work of a carpenter.

"Mr. Clark: I object to that.

"Mr. Routzohn: I think that is very important.

"The Court: I don't think it is.

"Mr. Routzohn: I suppose I should show, if your Honor please, that Mr. Jacoby had not been employing union labor. [1150]

"The Court: It is unimportant whether he did or not. I do not see that it has anything to do with the issues here, at all.

"Mr. Routzohn: I would like to make that proffer, that Mr. Jacoby was not——

"The Court: If you wish to ask the question you can.

"Mr. Routzohn: Q. Was it your objection that Mr. Jacoby, who was there for the Walter Manufacturing Company, did not comply with the labor conditions that were set forth in your contract?

"Mr. Clark: I object to that on the ground it is immaterial, irrelevant, and incompetent, and also leading.

"The Court: Sustained.

"Mr. Routzohn: Q. Tell us what you said relative to Mr. Jacoby?

"A. I told Mr. Williams that there were non-union men working in the basement of Roos Bros.——

"Mr. Clark: We move to strike that out as irrelevant.

"The Court: It seems to me it is immaterial here. I think you are going very far afield. It may go out."

32. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence the letter dated August 11, 1939, addressed to Mayor Rossi by Mr. Ryan, Secretary of Bay Counties District Council of Carpenters, being Government's Exhibit 115-30 for identification and offered in evidence by defendants as follows:

"Government's Exhibit 115-30 for identification is a letter dated August 11, 1939, addressed to Mayor Rossi, written by the Bay Counties District Council of Carpenters.

"Mr. Routzohn: Do you wish to see this, Gentlemen?

"The Court: I suppose it is along the same line, is it? [1151]

"Mr. Routzohn: On similar, but I think a little bit more comprehensive in its language, and I would like to read it into the record, if your Honor please.

"The Court: If it is along the same line I cannot see any necessity for it.

"Mr. Routzohn: It is just a little bit more comprehensive in its scope.

"Mr. Clark: We would like to object again as immaterial. We are not objecting to Mr. Ryan's efforts on this job, what we are objecting to is the combination that he entered into to keep these people from bringing in mate-

rial and its being installed. That is entirely immaterial to the Government's case.

The Court: You can make the offer. I think you have gone far enough. Make the offer.

Mr. Routzohn: My only purpose in all of this is to explain the gentlemen's duties.

The Court: He has explained that quite fully already.

Mr. Routzohn: We wish to offer the letter, addressed by Mr. Ryan, Secretary of the Bay Counties District Council of Carpenters, dated August 11, 1939, which is marked for identification Government's Exhibit 115-30.

The full substance of the evidence rejected is as follows:

"Bay Counties District Council of Carpenters
(Letterhead)

San Francisco, California

August 11, 1939.

"The Honorable Angelo J. Rossi,
Mayor of the City of San Francisco,
City Hall,

San Francisco, California. [1152]

"Dear Sir:

"In relation to the construction of municipal projects in the City and County of San Francisco with special reference to the undisputed desirability of allocating to local manufacturing plants and local labor, the largest possible amount of the work in connection with

such projects, may the undersigned respectfully suggest steps that could be taken by the officials and awarding officers of the City and County of San Francisco, in the exercise of their authority, that would retain for local plants and local labor, practically all of such work.

"From the time a project is authorized and until the general contract for it is awarded and signed, there are three points we wish to refer to you:

"1. At the time the architect is selected to draw up the plans and specifications, we suggest that it be impressed upon his mind that within reasonable limits, the cost of any item or classification of material, supplies, or equipment is not as important as the question of whether or not it is bought and fabricated in the City and County of San Francisco.

"We suggest that the millions of dollars in bond issues that the property owners and tax payers have met and still have to meet to relieve unemployment, makes it absolutely foolish to have equipment and fabricated materials manufactured outside of San Francisco in order to save a few dollars on the contract price, when such a practice keeps local plants idle, keeps local labor on the streets and adds \$10 to the burden of San Francisco in meeting unemployment expenses for every one dollar saved on the contract price.

"2. We suggest also, that when the complete plans and specifications are before the awarding officers for [1153] approval that representatives of local firms and local labor be given an opportunity in the presence of the architect and awarding officers to learn in what particular part of the work the architect has specified some material or item of equipment made outside of San Francisco "or its equal", and being informed what special advantage lies in such a stipulation that makes it paramount to local manufactured equipment.

"3. We suggest in conclusion, that when the plans and specifications are ready for delivery to the prospective bidders that a time and place be set when they will be made available and that again in the presence of the awarding officers, representatives of local firms and local labor, the desirability of having all sub-contracts awarded to local firms be opened to discussion in an endeavor to reach an agreement with the prospective bidders to confine their sub-contracts to local firms.

"Sincerely yours,

D. H. RYAN, Secretary,

"Bay Counties District Council of Carpenters."

DHR:m

33. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence pamphlet entitled "Argument for Charter Amendment", being defendants' Exhibit V for identification and offered in evidence by defendants, as follows:

"Mr. Routzohn: I first wish to offer in that connection a pamphlet entitled "Argument for Charter Amendment," and on page 5 of the pamphlet, entitled "Help Your City"—

"Mr. Clark: I object to your reading that. [1154]

"Mr. Routzohn: That is the only way I can identify it.

"Mr. Clark: He can identify it and say he has offered Defendants' Exhibit For identification. He might otherwise as well introduce it in evidence.

"The Court: Have you finished with your offer?

"Mr. Routzohn: Yes, that portion.

"The Court: Is there an objection by the Government?

"Mr. Clark: Yes.

"The Court: What is the objection?

"Mr. Clark: Objected to as immaterial to any issue in this case.

"The Court: Sustained.

"(The document was marked 'Defendants' Exhibit V for Identification)."

The full substance of the evidence rejected is as follows:

Argument on Charter Amendment
Help Your City

Vote "Yes" on Charter Amendment No. 6.

It provides for a preferential in behalf of San Francisco taxpayers doing business with San Francisco.

It will encourage home industry in the same way every other city and county in the State does.

It will give people of San Francisco full benefit of \$20,000,000.00 P. W. A. bonds voted by the people to provide work and trade for people of San Francisco.

Many of the benefits of P. W. A. are going to people of other communities.

The amendment would give ten per cent preferential to San Francisco bidders on P. W. A.

The amendment is proposed jointly by business and labor organizations. [1155]

For example the Glen Park school is now being built and all millwork is being done in a distant city because local planing mills were \$211.00 higher in bid than outside planing mills.

\$32,000.00 worth of fire hydrants have been let to a plant in Los Angeles whose bid was \$411.00 less than a San Francisco firm.

Committees representing the San Francisco Chamber of Commerce San Francisco Labor Council and San Francisco Junior Chamber of

Commerce made every effort to retain such business but had to give up because the present charter makes it irregular to give preference to home industry.

In other cities San Francisco firms are often thrown out because outside the county taking the bid and San Francisco firms have given up on bidding on public work to be done less than ten miles from this city.

Working men, tax payers and manufacturers of San Francisco voted to spend millions of dollars to stimulate local business and give employment to local people. Because of the charter such millions must be spent to stimulate business and promote employment in other communities.

Charter Amendment No. 6 remedies this by giving a ten per cent preferential in behalf of local industry.

34. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence San Francisco Charter Amendment No. 6, entitled "Preference for Local Labor and Industry", being defendants' Exhibit W for identification, and offered in evidence as follows:

"The Court: Do you wish to offer some amendment to the Charter?

"Mr. Rontzohn: Yes, the Charter Amendment No. 6, [1156] entitled "Preference for Local Labor and Industry." I think it has a material bearing on this case.

ter of the City and County of San Francisco, pages 56 and 57, defendants' Exhibit X for Identification, and offered in evidence, as follows:

"Mr. Routzohn: We are also offering it in evidence. I also wish to offer in evidence along the same lines, your Honor, the charter of the City and County of San Francisco at pages 56 and 57.

"Mr. Clark: We object to that as immaterial, your Honor.

"The Court: Sustained.

"(The documents was marked "Defendants' Exhibit X for Identification.") [1158]

"Mr. Routzohn: I would like to have a stipulation that the proper foundation has been laid for offering these exhibits in evidence.

"The Court: Yes.

"Mr. Routzohn: Can we have that stipulation so that there will be no question about what the offer is?

"Mr. Clark: We object to the materiality of it.

"The Court: There can be no question, I take it, that the proper foundation has been laid.

"Mr. Clark: We are not objecting to it for lack of foundation.

"Mr. Routzohn: You have no objection along that line, your objection is merely to the materiality of it?

"Mr. Clark: Materiality of it."

The full substance of the evidence rejected is the same as Section 98 of the Charter hereinbefore set forth and contained in Assignment No. 34, and by this reference such evidence is incorporated herein. That in addition the following was contained:

"Ratified by the Legislature, May 17, 1935."

36. The Court erred in excluding the testimony of defendants' witness, David H. Ryan, as follows:

"Mr. Routzohn: Q. Now, Mr. Ryan, from 1935 on, 1936, 1937, 1938, 1939, 1940 and 1941 up to the present time, have you had a continuous labor dispute with the C. I. O. in your organization?"

"Mr. Clark: We object, first, as immaterial; second, as calling for the opinion and conclusion of the witness."

"The Court: The objection is sustained."

"Mr. Routzohn: I want to prove there has been a labor dispute here, not only with these men, but with a dual organization."

"The Court: The objection is sustained."

[1159]

37. The Court erred in excluding the testimony of defendants' witness, David H. Ryan, as follows:

"Q. In all of the negotiations that you have had with employers, ranging from 1935 on up to the present time, I will ask you whether or not there has ever been in your mind an intent or purpose to restrain interstate commerce."

"Mr. Clark: We object to the intent and purpose of this witness as immaterial to any issue in the case.

"The Court: Sustained."

38. The Court erred in excluding the testimony of defendants' witness, Charles Helbing, as follows:

"Mr. Howard: Q. Were you acting with intent then in any way than to carry on your objects of labor and the acquisition of proper working conditions in your activities here?

"Mr. Howland: Objected to on the ground that intent is immaterial.

"The Court: Sustained.

"Mr. Howard: I presume it is not necessary to offer that same offer of proof, your Honor, in regard to the other testimony, for example, an offer of testimony that might be offered here relating to this objection?

"The Court: I do not know what you are referring to.

"Mr. Howard: If your Honor will recall, I was somewhat troubled in connection with this line of testimony on the previous occasion that there might be the same objection, and I made an offer of proof with respect to the intent with which these men were acting.

"The Court: I think the intent is immaterial.

"Mr. Howland: We have an understanding that it is not necessary to offer this same thing through each witness. [1160]

"The Court: I do not know; I hardly think so.

"Mr. Howard: Your Honor's ruling would be the same?

"The Court: Yes.

"Mr. Howard: That is all."

39. The Court erred in excluding the testimony of defendants' witness, Walter C. O'Leary, as follows:

"Q... Do you know whether the Aladdin Company was union or non-union?

"Mr. Zirpoli: We object to that.

"The Court: Sustained."

40. The Court erred in excluding the testimony of defendants' witness, Kenneth Davis, concerning the affiliation of certain firms in the Northwest with defendant, United Brotherhood of Carpenters and Joiners of America and their right to use its label and in sustaining the objection to defendants' offer of proof through such witness, as follows:

"Q. I call your attention, Mr. Davis, to the McCleary Timber Company which has been previously testified about in this case, the testimony appears in transcript No. 4 at page 320, and ask you if you know whether or not during the period from 1936 to 1940 that company was organized by the United Brotherhood of Carpenters and had the right to use the label of the United Brotherhood of Carpenters on its woodwork and material.

"Mr. Zirpoli: I object. This is immaterial and irrelevant and not within the issues of the case.

"The Court: Sustained.

"Mr. Carson, II: I would like to make an offer of proof in this connection.

"The Court: Yes.

"Mr. Carson, II: The testimony of this witness will show that the McCleary Timber Company, the Weyerhaeuser [1161] Lumber Company, the Long-Bell Lumber Company, the Central Door and Lumber Company of Portland, Oregon, the Central Door and Plywood Company of Albany, the G. D. Johnson Company, the Robinson Manufacturing Company at Everett, Washington, the Ewema Box Company at Klamath Falls and the Algoma Lumber Company at Algoma, Oregon, from the period 1936 to the period of 1940 were not organized by the United Brotherhood of Carpenters, were not working under a contract with any local union, or affiliated organization of the United Brotherhood of Carpenters, did not possess the right to use the union label, and none of their products with the exception of the doors of the Central Door and Lumber Company possessed the union label.

"Mr. Zirpoli: I make the same objection, your Honor; it is immaterial and irrelevant and not within the issues of this case.

"Mr. Rutzohn: Your Honor please, I am

not certain that the full import of this testimony is being considered at this time.

"The Court: I understand it fully. If you wish to add anything to the offer that has been made by Mr. Carson, you may.

"Mr. Rouzohn: Merely a statement as to the purpose, your Honor.

"The Court: I don't care to hear anything further. I think Mr. Carson has made it quite clear. The objection will be sustained."

41. The Court erred in excluding the testimony of defendant's witness, Kenneth Davis, concerning the organization of the lumber and sawmills in the States of Washington and Oregon by the A. E. of L. and C. I. O. during the years 1935 to 1940, inclusive, and in sustaining the objection to defendant's offer of proof through such witness, as follows: [1162]

"Mr. Carson, II: Q. Mr. Davis, are you acquainted with the facts concerning the organization of the lumber and sawmills located in Oregon and Washington during the year of 1933? A. I am.

"Mr. Zirpoli: I make the same objection, your Honor; immaterial and irrelevant.

"The Court: Yes. The answer may go out. The objection is sustained.

"Mr. Carson, II: Q. Are you acquainted with the facts surrounding the organization of the lumber and sawmills in Washington and Oregon in the year 1934? A. I am.

"Mr. Zirpoli: Same objection.

"The Court: The answer will go out.

"Mr. Zirpoli: Immaterial and irrelevant.

"The Court: The objection is sustained.

"Please don't answer until I have an opportunity, witness, to hear the objection, and an opportunity to rule.

"Mr. Carson, II: Without repeating the question, but the same facts as to 1935, 1936, 1937, 1938, 1939 and 1940.

"Mr. Zirpoli: I interpose the same objection, your Honor.

"The Court: Sustained.

"Mr. Carson, II: May it please the Court, we offer this testimony and this witness' testimony will show, in the year 1933 the mills in the Northwest, the lumber and saw mills in the States of Washington and Oregon were independent organizations and not affiliated with either the A. F. of L. or the C. I. O.; that their wages at that time were from 19 to 28 cents per hour; that in the year 1934 those organizations under the NRA affiliated with the A. F. of L. and received Federal charters, at which time their wages were advanced to the minimum wage of 40 cents per [1163] hour; that in the year 1935 they became affiliated with the United Brotherhood of Carpenters and received non-beneficial charters, at which time their minimum wages were increased to 50 cents per hour; that during the year 1940 they asked for recognition in the United Brotherhood of Carpenters under the classification of

semi-beneficial locals; upon the recommendation of the president, general president Hutcheson, they were accepted into the organization and their charters were issued on a semi-beneficial class with the semi-beneficial benefits as set out in the constitution of the United Brotherhood of Carpenters and Joiners which is in evidence in this case; that in the year 1935 when they first affiliated with the United Brotherhood of Carpenters; they had approximately 1,900 members, and by 1937 their membership had increased to 35,000 members; that in the year 1937 certain industrial warfare occurred in the States of Washington and Oregon, resulting in splitting up that union by the CIO in that territory, which left approximately 20,000 members in the United Brotherhood of Carpenters and approximately 15,000 went over to the CIO; that in the year 1940 these organizations were all back into the United Brotherhood of Carpenters and had increased their membership to 50,000; that the testimony of this witness will establish that the organization's efforts, that the contracts and efforts on the part of the locals and the District Council in the Bay Counties area was directly allied and a part of the organization's efforts of the United Brotherhood of Carpenters in the Northwest and is interallied with that organization and with the efforts to stop the inroads of the CIO.

"Mr. Zirpoli: All of which testimony, I submit, is [1164] immaterial and irrelevant.

"The Court: Do you wish to add anything?

"Mr. Routzohn: I think it is quite material, your Honor, for us to show—

"The Court: Please, Judge, I don't wish to hear any argument. The objection is sustained.

"Mr. Routzohn: All right, sir.

"The Court: I am sorry, but I don't wish to hear any argument."

42. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence circular letter, defendants' Exhibit 2-M for identification, and in sustaining objection to and striking out the testimony of the witness, Joseph I. Cambiano, as a foundation for admission of such exhibit, as follows:

"I attended the twenty-third General Convention of the United Brotherhood held in Lakeland, Florida, in December, 1935.

"Q. I will ask you whether or not at that time any action was taken relative to the CIO activities in this territory in interfering with the United Brotherhood unions and endeavoring to organize the planing mills in this district.

"Mr. Clark: Your Honor, we will object to any activities of the CIO, being outside any issue in this case.

"The Court: Sustained.

"Thereupon the jury was excused for the purpose of proffering certain documents in evidence.

"The following proceedings occurred:

"The Court: My suggestion is, you may make your offer, Judge Routzohn. I have read the document and I think I remember what it contains. You may make your offer for the record, and I will rule. [1165]"

"Mr. Routzohn: I desire, however, your Honor please, to lay the foundation for the introduction of the letter, unless there can be a stipulation at this time."

"The Court: Well, you may do that if you wish."

"Mr. Routzohn: Q. Mr. Cambiano, I hand you what purports to be a circular letter of date August 11, 1937, entitled Special Circular from General Executive Board sent by the General Executive Board of the United Brotherhood of Carpenters and Joiners of America, William L. Hutcheson, Chairman, and Frank Duffy, Secretary, and ask you to state to the Court just what that paper is."

"A. A circular sent out by the United Brotherhood of Carpenters—"

"Mr. Routzohn: No, no. It is a circular letter?"

"A. A letter to local unions throughout the United States and Canada."

"Q. By 'Local unions' you refer to local unions, of course, of the United Brotherhood?"

"A. Local unions, district councils, State councils and what not."

"Q. You said you were at the convention at the time it was taken up?"

"A. That's right.

"Q. At that time was there a dual organization known as the CIO, or Committee of Industrial Organizations, that was making any organization efforts and inroads on the locals?

"A. There was.

"Q. Of the United Brotherhood of Carpenters and Joiners of America?

"A. There was.

"Q. Was that true in this District as well as other districts throughout the Pacific Coast?

"A. Yes.

"Q. Including Washington and Oregon?

"A. Yes.

"Q. From 1936 on, has there been a constant and continuous organizing effort opposed to the organization efforts of the Brotherhood presented by the CIO organization?

"A. There has been. [1166]

"Mr. Clark: Your Honor, we will object and ask the answer go out.

"The Court: The answer may go out. What is the objection?

"Mr. Clark: Objected to as irrelevant and immaterial to any issue in this case.

"The Court: Sustained.

"Mr. Clark: I move to strike out the other answers. I thought he was laying a foundation to introduce this circular.

"The Court: I thought so, too.

"Mr. Clark: We move to strike it out.

"Mr. Routzohn: That was my purpose. I was trying to make it doubly sure we were getting the proper foundation.

"At this time, your Honor please, we wish to introduce into evidence—let us have that marked for identification—introduce in evidence this circular letter which has been marked for identification Defendants' Exhibit 2-M.

"Mr. Clark: We object, your Honor, on the ground, first, that it doesn't meet the case in chief; second, that it is self-serving; and, third, it is immaterial and irrelevant to any issue involved in this case. . .

"The Court: Objection sustained.

"(The circular letter was marked 'Defendants' Exhibit 2-M for Identification.)"

The full substance of the evidence rejected is as follows:

**"UNITED BROTHERHOOD OF CAR-
PENTERS AND JOINERS OF
AMERICA**

August 11, 1937.

**SPECIAL CIRCULAR FORM
GENERAL EXECUTIVE BOARD [1167]**

To the Officers and Members of all Local Unions and District, State and Provincial Councils of the United Brotherhood of Car-

"The Court: Is there any objection?"

"Mr. Clark: Yes, your Honor, immaterial."

"The Court: Sustained."

"(The document was marked 'Defendants' Exhibit W for Identification.')

The full substance of the evidence rejected is as follows:

"Charter Amendment No. 6."

Proposal to amend Section 98 of the Charter of the City and County of San Francisco submitted by the Board of Supervisors to provide for the allowance of a preference not to exceed ten per cent in favor of articles to be used on public works and improvements, which articles are manufactured, fabricated or assembled within San Francisco as against similar articles from elsewhere.

"Contractors' Working Conditions."

Section 98. Every contract for public work or improvements must provide that in the performance eight hours per calendar day shall be maximum hours of labor, labor shall be paid not less than the highest general rate of wages in private employment for similar work, any laborer must be a citizen of the United States and on contracts within the limits of the City and County must have been a resident of the City and County for one year next preceeding his engagement to perform the labor thereunder; the residence requirement being subject

to, waiver by the awarding officer under certain circumstances and conditions.

The term "public work" or "improvement" includes fabrication, manufacturing or assembling of materials, [1157] when the materials are of unique or special design, or are made according to plans and specifications for the particular work or improvement.

The Board of Supervisors shall have full power and authority to enact all necessary ordinances to carry out the terms of this section and may by ordinance provide that in any contract for any public work or improvement, or for the purchases of materials which are to be manufactured, fabricated or assembled, a preference in price not to exceed ten per cent shall be allowed in favor of such materials as are to be manufactured, fabricated or assembled within San Francisco as against similar materials manufactured, fabricated or assembled elsewhere. May provide that a subcontractor is entitled to the same preferential as original contractors. Any awarding officer, board or commission, when ordinance shall so provide, may in determining the lowest responsible bidder add to said bid or sub-bid an amount sufficient, not exceeding ten per cent, to give preference to materials manufactured, fabricated or assembled within San Francisco.

35. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence Char-

penters and Joiners of America. Greetings:

Acting on instructions of our 23rd General Convention held in Lakeland, Florida, December, 1936, a sub-committee of the General Executive Board visited the lumber and saw mill operations in the Northwest. While there, meetings were held with representatives of our District Councils of the Western States, as well as operators who employ our members. The committee endeavored to get first hand information as to the past manner of handling organization of this branch of our industry, so as to secure the best possible results for men working in the woodworking industry as to working conditions and the proper relationship of men in our organization.

It found communistic and adverse influences boring from within to destroy the activities of the United Brotherhood and building up of a dual International Union of Woodworkers, opposed to the United Brotherhood, but before the sub-committee reported its findings and recommendations to the General Executive Board the C.I.O. had already issued a charter, or certificate of affiliation to a dual organization called "International Woodworkers of America."

This dual organization is already trying to induce our local unions and members to secede from the United Brotherhood and to combat this dual movement it is necessary to notify

all local unions, district, state and provincial councils that our members must not handle any lumber or millwork manufactured by any operator who [1168] employs C.I.O. or those who hold membership in an organization dual to our Brotherhood.

Do not be misled by newspaper articles that the entire lumber and sawmill industry has gone C.I.O. Just the opposite is the truth. We have thousands and thousands of loyal members in the Northwest who are battling for the United Brotherhood and will continue to do so, and it makes it absolutely necessary for all members to give them their support by refusing to handle materials coming from C.I.O. operations.

The C.I.O. has challenged us, and we must meet that challenge without hesitation. Therefore, you are instructed to appoint a committee to inform your employees and the lumber dealers that our members will refuse to handle any dual or C.I.O. products.

A list of operations using this class of labor will be sent from time to time as the situation develops, but appoint a committee at once so employers will be informed in plenty of time to protect themselves before placing orders for lumber or millwork. Kindly comply with the instructions at once and inform the General President of the names and addresses of the committee so proper information can be sent.

direct to them as well as to you, to secure quick action.

Let your watchword be "No C.I.O. lumber or millwork in your district", and let them know you mean it.

Fraternally yours,

GENERAL EXECUTIVE BOARD

William L. Hutcheson

Chairman.

Frank Duffy

Secretary." [1169]

43. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence defendants' Exhibit 2-N for identification, as follows:

"Mr. Routzohn: Q. I hand you a paper writing of date August 21, 1939, which has been marked for identification Defendants' Exhibit 2-N, and ask you to state to the Court just what that paper is.

"A. This here is the agreement sent out by the Congress of the Industrial Organizations from Washington, D. C., a letter to all of the contractors in California.

"Mr. Routzohn: I would like to have your Honor see this.

"The Court: Yes.

"Mr. Routzohn: That agreement is sent by whom and in what capacity?

"The Court: This is headed "For Release Morning Papers Wednesday, July 26, 1939."

"Mr. Routzohn: Attached to that, your Honor, is—

"The Court: "Rules and Regulations of the United Construction Workers Organizing Committee" is attached to the newspaper release.

"Mr. Routzohn: Yes, the proposed agreement.

"The Court: Did you see it?

"Mr. Clark: I just saw the front page.

"The Court: Have you an objection?

"Mr. Clark: I thought it was a newspaper release.

"Mr. Routzohn: That is signed by A. D. Lewis. A. That's right.

"Q. Who is A. D. Lewis?

"A. A brother of John L. Lewis.

"Q. What is his position?

"A. President—

"Q. A. D. Lewis, Denny Lewis.

"A. He is supposed to be president of the construction department of the CIO. [1170].

"Q. The construction department of the CIO, how does that compare with the organization of the United Brotherhood of Carpenters and Joiners of America?

"Mr. Clark: We object to this line of questioning as immaterial and irrelevant to this case, as to any comparison between a setup of the CIO and the AF of L.

"The Court: Sustained.

"Mr. Routzohn: Q. Is it or is it not a dual organization to your own organizations that are defendants in this case?

"A. Positively—

"Mr. Clark: We object to that, your Honor, and move the answer go out. Object to it as immaterial and irrelevant.

"The Court: It may go out. Objection sustained. Has it been marked?"

"Mr. Routzohn: I wish to offer this in evidence, as well as Exhibit 2-M.

"Mr. Clark: We object to 2-N on the ground it is immaterial and irrelevant and appearing, the first part of it, in a newspaper release and the other, the rules and regulations of the CIO, which is not a party in this case, not involved here, does not meet the issues in the case.

"The Court: Sustained.

"Mr. Routzohn: Q. Well, those rules and regulations were a part of the organization efforts of the CIO, were they?

"A. That's right.

"Mr. Clark: We object to that and move it go out. Object as immaterial and irrelevant.

"The Court: The answer will go out. Objection sustained."

The full substance of the evidence rejected is as follows: [1171]

CONGRESS OF INDUSTRIAL ORGANIZATION.

1106 Connecticut Avenue, N. W.,

Washington, D. C.

August 21, 1939.

District 3582.

For Release morning papers, Wednesday,
July 26, 1939.

President John L. Lewis of the Congress of Industrial Organization today announced formation of United Construction Workers Organization Committee, for the purpose of organizing the workers in the construction industry.

The new CIO committee is under chairman A. D. Lewis.

Headquarters will be opened August 1, in Washington, D. C.

In announcing the formation of the committee President Lewis declared there was 3,000,000 workers in the construction industry, of whom less than one-third were organized. That since the CIO was formed thousands of requests had been received from individuals and groups of construction workers asking organization or affiliation with the CIO. The requests were caused because of a desire for a modern form of organization.

Under the constitution of the CIO the executive officers have decided to establish United Construction Workers Organizing Committee. The work of the committee is directed to A. D. Lewis who is authorized to issue charters to construction workers who desire to affiliate.

A large number of Local Industrial Unions already chartered will be transferred to U.C.W.O.C. at once.

Dues will be \$1.50 per month and no initiation fees.

The aim of U.C.W.O.C. will be to organize a powerful industrial union—abolish the evils and abuse of the industry—improve working conditions. [1172]

Special provision will be made to eliminate unauthorized strikes, jurisdictional disputes and lockouts, and for peaceful adjudication of labor disputes.

The declared objects are:

1. To unite in one organization construction workers.
2. Improve working conditions.
3. Stabilize industry by eliminating unauthorized strikes.
4. Provide education and better living conditions of members.

**UNITED CONSTRUCTION WORKERS
ORGANIZING COMMITTEE, AFFILI-
ATED WITH CIO.**

15th and Eye Streets, N. W.,

Washington, D. C.

August 21, 1939.

Rules and Regulations of United Construction Workers Organizing Committee.

Innumerable requests from construction workers throughout the United States for affiliation with the CIO have been received and given consideration. To provide opportunity to join an organization of their own choosing,

free from the evils that have beset the industry, excessive dues, and exorbitant initiation fees, the CIO has organized U.C.W.O.C. The committee herewith promulgates the following rules and regulations to govern the activities of the organization:

1. (Objects same as declared in preceding document.)

2. This organization shall be known as United Construction Workers Organizing Committee.

3. Charters shall be issued to local unions of construction workers when, in the opinion of the committee, [1173] it is to the best interests of the organization to do so.

4. Ten eligible individuals may apply for a charter.

5. Creates and specifies the officers of a local union.

6. Prescribes the duties of the President.

7. Prescribes the duties of the Vice-President.

8. Prescribes the duties of a recording-secretary.

9. Prescribes the duties of a Secretary-Treasurer.

10. Prescribes the duties of a Board of Directors.

11. Provides for the election of a business agent, prescribes his duties and fixes salary.

12. Provides for the election of a Job

Steward, prescribes his duties and fixes salary.

13. The Committee shall determine as to an initiation fee.

14. Provides for disposition of fees.

15. Provides for dues.

16. Provides for dues books.

17. Provides dues shall be due on first of month.

18. The Committee is authorized to establish State or Regional departments under a director.

19. Provides against strike notice without authority from U.C.W.O.C.

20. The Committee shall make every effort to stabilize working conditions and adjudicate disputes.

21. Provides for elimination of jurisdictional disputes between classifications of employees.

22. Recognizes the necessity of adequate training of journeymen workmen.

23. Provides for election of officers.

24. Prescribes eligibility to offices.

25. Provides for removal from office.

26. Provides for audit of books by Committee. [H74]

27. Provides for supply of transfer cards.

28. Provides for transfer of members.

29. Provides for dismissal for arrearage in dues.

30. Committee is empowered to appoint organizers to act as business agents for locals.

31. Committee may suspend or revoke charters.

32. Committee is given control of locals relative to instructing on forms and financial records.

33. Provides rules and regulations may be changed in absolute discretion of committee. That locals may adopt rules or procedure to govern themselves not in conflict with the rules and regulations of the Committee.

A. D. LEWIS

Chairman U.C.W.O.C.

GARDNER H. WALES

Comptroller

U.C.W.O.C.

44. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence defendants' Exhibit 2-O for Identification, as follows:

"Mr. Routzohn: Another release, your Honor please, and a letter, a circular letter which we will have marked Defendants' 2-O for Identification.

"Mr. Clark: Is this along the same line?

"Mr. Routzohn: Yes.

"Mr. Clark: We object on the same ground.

"Mr. Routzohn: Except that it involves—

"Mr. Clark: Well, it is a CIO circular, isn't it?

"Mr. Routzohn: Yes.

"Mr. Clark: We object on the same ground.

"The Court: Sustained. [1175]

"Mr. Routzohn: Q. I hand you now defendants' Exhibit 2-O and ask you to state just what that is so we can get it in the record, is all.

"A. This is the circular that was circulated in some of the Congress of Industrial Organization—the construction industry.

"Mr. Routzohn: We offer Defendants' Exhibit 2-O.

"The Court: Is it along the same lines?

"Mr. Clark: We object to it, your Honor; it is a CIO Circular.

"Mr. Routzohn: Yes.

"The Court: Objection sustained.

The full substance of said rejected evidence is as follows:

SACRAMENTO

CIO

Phone Capital-5044

Edward J. Cherry, President,

J. T. Dudley, Secretary,

U. C. W. U., Local 66,

Affiliated with Congress of Industrial Organization,

821 1/2 J Street,

Sacramento, California.

January 18, 1940.

To All Contractors and Builders.

Gentlemen:

We wish to call to your attention the fact that United Construction Workers Organizing

Committee has been organized on a nationwide scale.

We are attempting to eliminate jurisdictional disputes in the building industry by having all members of a construction crew belong to ONE union, instead of [1176] 26 or 27 different crafts, with attendant friction between crafts. In our opinion building costs can be considerably reduced, business increased and steadier employment obtained. The value of an industrial union where men can move to any part of a job without fear of a jurisdictional dispute, along with special provisions made for settlement of grievances can be readily seen by anyone familiar with construction work.

We are pleased to announce Sacramento Local 66 of U.C.W.O.C. (CIO) has available and can furnish competent men for all branches of construction industry.

Further information may be had at the above address by phone or letter.

Very truly yours,

EDWARD J. CHERRY,

President

Robert Chitwood,

Secretary.

**CONSTRUCTION AND BUILDING
TRADE WORKERS ATTENTION!!!**

Local No. 66, U.C.W.U., is making a drive for membership on the following points:

1. No initiation fees at present.
2. Low dues.
3. Job protection.
4. All crafts in one union.
5. Chance to go to higher job if you can handle.
7. Special provision for handling grievances.
8. No "kick-back" of wages.
9. Organizes the workers instead of the boss.
10. Higher wages.
11. Chance to transfer to any CIO union without transfer or initiation fee. [1177]
12. Closed shop under "Low Cost Housing Builders of Sacramento.
13. A union instead of an employment agency.

These are some of the points on which we are building the union. Further information at meetings of Local No. 66 held every second and fourth Wednesday of the month. Next meeting January 24, 1940 at 7 P. M., 821½ J Street.

Organizing Committee,
Local 66,
U.C.W.O.C.
821½ J Street,
Sacramento.

FOR IMMEDIATE PRESS RELEASE

January 1, 1940.

Sacramento Citizens Committee on Slum Clearance and Low Cost Housing was formed January, 1939.

Since its formation a broad study has been made of housing conditions, particularly in Sacramento County.

It is found that for many years the building industry has not been building homes which can be purchased by families with low incomes. The United States Housing Authority has made progress in bringing the facts to the people and in actual clearing up of slum conditions.

Through lack of cooperation in the last session of Congress the program has been badly delayed and powerful interests used efforts to sabotage it.

A building program can contribute most to the return of prosperity. Decent homes are still beyond reach of those with low incomes. The four major items responsible are:

1. High cost material. [1178]
 2. High contractors' profits.
 3. High cost of labor due to jurisdictional disputes of craft unions.
 4. Profits of real estate operators.
- (1) It can be reduced by buying materials in large quantities.
 - (2) Contractors' profits will be eliminated.
 - (3) Reduction of labor costs by using members of the CIO.

(4) Real estate sales can be eliminated.

Can build four room, two bath room houses for less than \$17.00 p^{er} month. Compared with rents there will be a great demand for such homes.

We are not condemning or criticizing contractors or real estate operators but profits must be eliminated to produce for the class of people who will need them.

Such a program could be used by states and counties.

We cannot too strongly stress the importance of the cooperation and help of the House Committee of the National Congress of Industrial Organization. (CIO).

President Roosevelt has, with truth, said that one-third of our nation is ill housed. We are going to make a determined effort to do something in our country.

(Signed) J. T. DUDLEY.

Secretary-Treasurer

SACRAMENTO INDUSTRIAL
UNION COUNCIL (CIO)

Chairman

SACRAMENTO CITIZENS
COMMITTEE ON SLUM
CLEARANCE AND LOW
COST HOUSING.

Address:

Sacramento Industrial Union Committee,

821½ J Street,

Sacramento, California: [1179]

45. The Court erred in sustaining plaintiffs' objection and refusing to admit in evidence defendants' Exhibit 2-P for identification as follows:

"Mr. Routzohn: Q. I hand you a paper writing which has been marked Defendants' Exhibit 2-P for identification and ask you to state what that is, Mr. Cambiano.

"A. A communication from the General Constructors Association of Contra Costa County.

"Q. Having to do with the CIO affairs?

"A. Yes.

"Q. In this very district in Contra Costa County?

"A. Yes, sir.

"The Court: Has it been marked?

"Mr. Routzohn: It has been marked for identification. I wish to offer it in evidence at this time, your Honor.

"Mr. Clark: We will object, your Honor, on the same grounds; the same type of offer that he has made, CIO.

"The Court: Sustained. Is that all?

"Mr. Routzohn: Except a statement that I would like to make at this time, if your Honor please.

"The Court: Very well.

"Mr. Routzohn: I will be very brief. That is that my individual thought has been throughout the trial of this case that there might be some claim made by the counsel for

the prosecution that the evidence in this case does not show, or there is a lack of evidence on our part to the effect a labor dispute existed throughout the period of the indictment.

"The Court: I don't care to hear any argument on that now.

"Mr. Routzohn: It is merely to show that there was a potential labor dispute existing in addition to the one with the employers that are involved in this case. [1180]

"The Court: All right. Well, I, of course—

"Mr. Routzohn: (interrupting): Your Honor, I have no ulterior motives at all.

"The Court: Oh, I appreciate that.

"Mr. Routzohn: Incidentally, there have been some—in addition to that, there has been a dual organization here and dual efforts which accounted for the refusal to handle, if your Honor please, a great deal of work that came from the Northwest, many of the things that have been testified to in this case.

"The Court: Yes. Well, have you finished with your evidence?

"Mr. Routzohn: Yes, your Honor."

The full substance of said rejected evidence is as follows:

General Contractors Association

of Contra Costa County

Richmond, California.

My dear Member:

April 29, 1940.

This is your official notice of a Special Meeting to be held in Martinez, Thursday, May 2nd, at Memorial Hall, 7:30 P.M.

We must make up our minds about a Labor Agreement for the coming year, as our agreement with the A. F. of L. expires May 14, 1940.

President *Enes* is anxious to have full membership attendance and as many contractor guests brought as possible.

The CIO has offered a very attractive agreement to this association and they are very desirous of having the agreement.

You know what the setup is now. Each craft has its [1181] own union, each working different hours and for a different wage.

Under this other arrangement, all work would be carried on with the same hours per day with all crafts in the same union and a contractor would be able to hire direct any man or craftsman that he so desired.

In order that we don't make any costly errors in our bargaining, it is important you attend and bring a few contractor friends. In this manner we will be able to determine the wish of the majority and make a wise decision.

Sincerely yours,

Secretary.

46. The Court erred in sustaining plaintiff's

objection and striking out the testimony of the witness, Joseph F. Cambiano, as follows:

"Q. Have you ever at any time entered into an agreement with any intention whatsoever of violating the Interstate Commerce Law? A. No, I have Not.

"Mr. Clark: Just a minute, we move to strike out the answer as intent is immaterial.

"The Court: Let it go out. The objection is sustained."

47. The Court erred in excluding the testimony of defendants' witness, Joseph F. Cambiano, as follows:

"Q. There is a dispute on now, is there not, in 1941, over the wage scale?

"Mr. Clark: We object to that as immaterial, and as calling for the conclusion of the witness.

"The Court: The objection is sustained.

"Mr. Rontzohn: Q. Is there an arbitration going on at the present time over the wage scale between the employers and the employees? [1182]

"Mr. Clark: We object to that as being immaterial to any issue in the case.

"The Court: Sustained.

48. Statements made by counsel for plaintiff during the trial and before the jury relative to defendants who had made a plea of nolo contendere and by reference to such as pleas of guilt, con-

stituted prejudicial misconduct, and the Court erred in overruling defendants' objections thereto, as follows:

Thereupon opening argument for plaintiff was made by Mr. Clark, during which the following proceedings occurred:

"In the beginning of the case, when the indictment was returned there were eight labor unions in the case, and there were three employer associations and thirty-three millwork and patterned lumber concerns; there were thirty-nine individuals. Since that time some of them have dropped by the wayside by dismissal, some of them have plead what we call nolo contendere, and some have been dismissed. Now, in the beginning, there were these three associations on the Employers' side: The Lumber Products Association, over here in San Francisco. You will remember some of the testimony brought in, a gentleman by the name of Gaetjen, the Secretary of that. Then there was the Wood Products Association, over in Oakland, and that was Mr. Nat Edwards. You will remember that his name was featured in some of the testimony. A third employers' association was that of which Mr. Ennes is the Secretary, and that is the Cabinet Institute.

Now, the first two associations I have named have plead nolo contendere, and they are not to be considered by the Court in deciding their guilt.

As His Honor has told you, a plea of nolo contendere in this case is tantamount to a plea of guilt. [1183]

"Mr. Routzohn: Your Honor please, we object to the statement just made by the counsel relative to nolo contendere being a plea of guilt, and even the reference to the fact that certain defendants have entered pleas of nolo contendere.

"The Court: Your objection is overruled.

"Mr. Routzohn: All right.

"The Court: The Supreme Court of the United States has said that a plea of nolo contendere is tantamount to a plea of guilt. Now, the word 'tantamount' is my own word, but that is what the Supreme Court has said. So there is nothing in your objection, Judge.

"Mr. Routzohn: Well, may we have the instruction at this time, your Honor please, that that is not to be considered in any way affecting—

"The Court: No, no, you may not.

"Mr. Routzohn: (Continuing) —the guilt or innocence of these defendants?

"The Court: You may not, and I shall instruct the jury to the same effect when it comes to final instructions."

49. The Court erred in instructing the jury, as follows:

"In Count I of the indictment the grand jury included among the defendants eight labor

unions, as well as some of their officials. I shall refer to these defendants as the labor union defendants. Also included in the indictment were three employer associations and some of their members as well as officials, which I shall call the non-labor defendants. Two of these employer associations, that is, the Lumber Products Association of San Francisco and Wood Products, Inc. of Oakland, as [1184] well as those defendants who were members thereof, and their officers, have pleaded nolo contendere. As I have heretofore explained to you, such a plea is an admission of guilt for the purposes of the case."

to which defendants excepted as follows:

"I except first, your Honor, to the portion of your Honor's charge which in effect characterized the nolo contendere pleas of the other defendants as admissions of guilt, and, in other words, to that part of the charge with respect to nolo contendere."

This exception was well taken in that such pleas should not have been characterized before the jury as admissions of guilt and it was improper to tell the jury that co-defendants had pleaded guilty or admitted guilt where such defendants did not appear as witnesses and testify in the case.

50. The Court erred in instructing the jury, as follows:

~~You are to determine the guilt or inno-~~

cence of a corporation by an examination of the acts done by its responsible officers or agents. The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation.

"If you find that there did exist a combination and conspiracy such as is charged in the indictment, and that any defendant corporation participated therein, then I instruct you that such act of participating is deemed to be also the act of the individual director, officer or agent of such defendant corporation who authorized, ordered or did such act in whole or in part. [1185]

"Likewise, the list of defendants includes a number of labor union organizations and several members thereof. It has been stipulated in this case that these labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that act, separately and apart from the guilt or innocence of their members.

"You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents."

to which defendants excepted as follows:

"We object, or, rather, wish to except expressly to the charge that we determine the guilt or innocence of the labor union defendants in the same way that you would the corporations with reference to the acts of their representatives and agents and with reference to the knowledge necessary to bind the union organizations, we take that exception" and "I also except to your Honor's charge with respect to the associations or corporations and your definition of them as being in substance separate entities, similar entities, and that they could be similarly found guilty upon the basis of acts of certain individuals associated with them."

"I likewise except specifically to that portion of the charge in this connection dealing with the responsibility of unincorporated associations, particularly such as that involved here, for the acts of its agents."

The exception was well taken because such instruction was erroneous in that it applied a civil rule without fully [1186] defining it and charged the jury that the union organizations would be criminally responsible for the act of an agent done within the scope of his authority, or which he has assumed to do while performing duties actually delegated to him, without regard to the actual authority for the particular act or knowledge thereof and con-

trary to the provisions of the Norris-LaGuardia Act, 47 Stat. 71; 29 U.S.C.A. Sec. 106.

51. For the reasons stated in the instruction the Court erred in refusing to give Instruction No. 55 requested by these defendants, as follows:

"You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act,"

to which refusal defendants excepted, as follows:

"I wish to take the following exceptions to the charge, if your Honor please. Referring to the proposed instructions of the union defendants, we wish to except to the Court's not giving Instructions No. 55, 56, 57 and 58 relating to the binding effect of representatives acts on the union defendant organizations, and with reference to the knowledge of the union organizations of these acts. I assume that I should restrict myself to the numbers.

"The Court: I think so. I think that will be sufficient."

52. For the reasons stated in the instruction the Court erred in refusing to give Instruction No. 56 requested by [1187] these defendants, as follows:

"You are instructed that no labor union or

organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof."

The exception taken is quoted in Assignment No. 51, and by this reference is incorporated herein.

53. For the reasons stated in the instruction the Court erred in refusing to give Instruction No. 56 requested by these defendants, as follows:

"You are instructed that no individual defendant who is an officer or member of one of the labor organizations involved can be found guilty in this case for an unlawful act, or acts, if any, of other officers, members or agents of such union organizations, except upon clear proof from the evidence that such individual defendant actually participated in or actually authorized such an act or ratified such unlawful act, if any, after actual knowledge thereof."

The exception taken is quoted in Assignment No. 51, and by this reference is incorporated herein.

54. The Court erred in instructing the jury, as follows:

"I have spoken of interstate commerce. As stated, it consists of the shipment of commodities or materials from one state to another. In

this case the question is whether the labor union defendants entered into a combination with the non-labor defendants whereby the defendants intended to or did bring about an undue restriction of or interference with interstate commerce in millwork or patterned lumber. It is the nature of the restraint and its effect on interstate commerce, and not the amount of the commerce which are the tests of violation.

"If a group of California lumber dealers should stop a truck coming from Oregon loaded with lumber because they did not want any Oregon lumber in California, and prevent its entry, that is an unreasonable interference with interstate commerce, although it involves only one truckload of lumber."

to which defendant objected, as follows:

"I except further in connection with your Honor's description of the nature of the restraint and your statement, in effect, that the nature of the restraint and not the amount was the sole test of guilt."

The exception was well taken because such instruction was erroneous in that it disregarded the rule of reason and charged the jury that the nature and effect of the restraint was the sole test of guilt without regard for the amount or purpose of the restraint.

55. The Court erred in instructing the jury, as follows:

"If you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork manufactured in States outside the State of California; or if you find that the employer and labor union defendants entered into an agreement [1189] or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase and the labor union defendants agreed not to work on any patterned lumber or millwork manufactured under conditions unfair to the employer defendants including patterned lumber and millwork manufactured outside the State of California; such an agreement or understanding would constitute a violation of the Sherman Act as charged in the indictment. It would constitute no defense under the law, either to the employer defendants or to the labor union defendants that the agreement or understanding may have been arrived at in settlement of a labor dispute; and it would likewise constitute no defense under the law that any such agreement or understanding may have been arrived at as the result of proceedings in arbitration of such a dispute."

to which defendants excepted, as follows:

"We except to the charge that where we find an employer and a labor union defendant agreeing not to purchase lumber under different wage scales and affecting out of state lumber; or where they agree not to work on such material or lumber that is unfair to the employer, that such is a violation in and of itself of the Sherman Act; that there is no defense here by reason of the fact that any contract or agreement or understanding was arrived at in settlement of a labor dispute. The charge that the existence or non-existence of a labor dispute here is immaterial, that is no defense that any contract was as a result of a proceeding, for arbitration of a labor dispute, or as a result of such arbitration," * * * and, "I also wish to except to that portion of your Honor's charge dealing with the matter of the lower wage [1190] scale not being a matter of defense, but in effect being a substantial ground for conviction. And to that portion of the charge to the effect that conditions unfair to the employers would not excuse the actions here and would in effect, standing alone, constitute a violation of the statute. Further, in that connection, with respect to the fact that in the arrival at the agreement there was no defense, rather, that the agreement was arrived at in settlement of a labor dispute, or in the arbitration of such a dispute being deemed by your Honor not to be a defense."

The exception was well taken because such instruction was erroneous in that it charged the jury that if the employer and labor defendants entered into an agreement not to purchase or work upon material manufactured under different working conditions, including material from outside the State of California, such would constitute a violation of the Sherman Act as charged in the indictment, and that it would be no defense that such agreement was arrived at in settlement of a labor dispute or as a result of proceedings in arbitration of such a dispute, thereby withdrawing from the jury any question of fact which would give rise to the application as a matter of law of the Clayton Act, 38 Stat. 730, or the Norris-LaGuardia Act, 47 Stat. 29, and denied as a matter of law the application of such statutes to the case.

56. The Court erred in instructing the jury, as follows:

"If you find that the employer and labor union defendants entered into a combination and conspiracy, the object of which was to prevent the purchase or importation by the employer defendants or other persons, firms, corporations, or parties within the State [1191] of California, of patterned lumber and millwork manufactured under conditions unfair to the employer defendants including patterned lumber and millwork manufactured outside the State of California; or if you find that the employer and labor union defendants entered into

a combination and conspiracy, the object of which was to prevent the purchase or importation by the employer defendants or other persons, firms, corporations, or parties within the State of California of patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork manufactured outside the State of California, such a combination and conspiracy would constitute a violation of the Sherman Act, as charged in the indictment. It would constitute no defense under the law, either to the employer defendants or to the labor union defendants, that the combination and conspiracy may have been arrived at as the result of the settlement of a labor dispute; and it would likewise constitute no defense under the law that any such combination and conspiracy may have been arrived at as the result of proceedings in arbitration of such a dispute,"

to which defendants excepted as follows:

"We except to the charge that * * * if the parties entered into a conspiracy not to work on material unfair to employers, regardless of their motives or intent on the part of the union defendants, such would constitute a violation of the act—I am referring to the Sherman Act * * * and if a conspiracy was entered into not to purchase or work upon lower wage

scale material, affecting materials from outside the State of California; that that in and of itself would constitute a violation of the Sherman Act regardless of motive, intent or objectives with which the Union defendants [1192] were acting, and it is no defense that any activities here resulted from labor disputes."

The exception was well taken because such instruction was erroneous in that it withdrew from the jury any question of fact which would give rise to the application as a matter of law of the Clayton Act, 38 Stat. 730, or the Norris-LaGuardia Act, 47 Stat. 29, and denied as a matter of law the application of such statutes to the case.

57. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 82 requested by these defendants, as follows:

"Either agreements or acts done in furtherance thereof by labor defendants for the purpose of furthering the unionization of other shops in the same industry in order to better the conditions and wages of the employees is a legitimate labor activity and does not violate the Sherman Act even though there is also present the motive of lessening interstate competition for union operators, which in turn lessens the pressure of the employer for reduction of the union scale or resistance to an increase. To find any labor defendant guilty of violating the Sherman Act you must find

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beyond a reasonable doubt the existence of a primary intent to directly restrain interstate commerce. If the effect upon interstate commerce is merely incidental to an intent to improve working conditions, it is your duty to acquit the labor defendants."

to which refusal defendants excepted, as follows:

"We except, take the same exception to the refusal to give the following numbered instructions: 59, 60, 61, 62, 63, 64, 65, 66, 67, 68; 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91 and consecutively right on through to 100, 101, 102, 105; that relates to the charge as refused to be given, of course." [1193]

58. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 83 requested by these defendants, as follows:

"The making of the agreement of September 21, 1936 by the defendant unions was not a violation of the Sherman Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

59. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 84 requested by these defendants, as follows:

"The execution of the agreement of September 21, 1936 would not warrant a conviction under this indictment because it does not constitute the conspiracy described therein."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

60. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 85 requested by these defendants, as follows:

"The union defendants had the lawful right to take the position as set forth in the agreement of September 21, 1936 that members of their unions would do no work upon any material or article that has had any operation performed on same by sawmills, mills or cabinet shops or their distributors that did not conform to the rates of wage and working conditions prescribed by the agreement of September 21, 1936, and such acts on the part of the unions and their members do not constitute a violation of the Sherman Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein. [1194]

61. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 86 requested by these defendants, as follows:

"Workmen are under no legal obligation to work on any kind of material. If the defendant unions and their members deemed it to their interest to refuse to work on material not manufactured in conformity with the rates of wage and working conditions prescribed by the agreement of September 21, 1936, they had a legal right so to do and the mere fact that

such material may have been made in some state other than California does not render such refusal unlawful or in violation of the Sherman Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

62. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 87 requested by these defendants, as follows:

"In order to find any labor defendant or organization guilty in this case, you must find that he or it was not acting with the intent of furthering the legitimate objectives of labor relating to the improvement of conditions of employment, but on the contrary with the specific and sole intent of being a tool or instrument of the employers to suppress competition or fix prices."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

63. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 88 requested by these defendants, as follows:

"You are further instructed as to both union organizations and individual defendants affiliated with such union organizations that since the acts charged here [1195] against said defendants are relevant to labor conditions and legitimate objectives of labor, in order to find any of such defendants guilty you must find beyond a reasonable doubt that he or it either

participated in, actually authorized or ratified such an act, not with the intent of carrying out legitimate objectives of labor but in combination or conspiracy with the employers with the unlawful intent of restraining interstate commerce by restraining or eliminating the competition from out of the state material.

"You are further instructed that since the acts attributed to the labor defendants are lawful, unless participated in, expressly authorized or ratified with such unlawful intent, the fact that such activities in fact result in a restraint upon interstate commerce does not give rise to the presumption of an unlawful intent, since if two legal presumptions may reasonable arise from the evidence, the law will presume a legal rather than an illegal intent."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

64. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 89 requested by these defendants, as follows:

"The negotiating, making or carrying out by the union defendants of the agreement of September 21, 1936, and the provisions thereof that no work would be done on any material or article having an operation performed on it by mills, sawmills, cabinet shops, or their distributors that do not conform to the rates of wage and working conditions of such agree-

ment, or the negotiating, making or carrying out of any subsequent agreement or [1196] understanding continuing such provision of the agreement of September 21, 1936, in effect is lawful and not a violation of the Sherman Act on the part of said union defendants, unless you find that such agreement was not made to carry out the interests and labor objectives of the unions but solely with intent to conspire and combine with the employer defendants to make the unions the instrument of the employer to restrain interstate commerce to eliminate competition from millwork and patterned lumber in interstate commerce."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

65. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 90 requested by these defendants, as follows:

"You are instructed that the negotiation and making of such an agreement as the contract of September 21st, 1936, covering wage scale and working conditions is within the legitimate objective of a labor union. You are further instructed that the elimination of price competition based upon differences in labor standards is the objective of any national labor union and with the object of promoting this interest, or any other legitimate object of labor such as the unionization of other mills in the industry, defendant labor unions had

the right to agree that no material should be purchased from, or work done on any material or article that had any operation performed on same by saw mills, mills, or cabinet shops, or other distributors not conforming to the rates of wage and working conditions of such agreement. You are further instructed that the labor defendants had the right to carry out and enforce the carrying out of [1197] such agreement in their own interest by peaceful and lawful means such as picketing and threatening to picket; strikes or threats to strike and advertising by other peaceful means the existence of material manufactured or handled under different conditions and standards and considered unfair to defendant unions."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

66. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 91 requested by these defendants, as follows:

"You are instructed that the agreement of September 26th, 1936 on its face relates to wages and conditions of employment for the union defendants, and the provision thereof to the effect that no material should be purchased or worked upon that had previously had an operation performed thereon by saw mills, mills, cabinet shops, or their distributors that do not conform to the rates of wage and work-

ing conditions of such agreement, was a lawful provision for the unions to agree upon. You are further instructed that the carrying out of such agreement by the peaceful means as charged in the indictment was likewise lawful on the part of the union defendants and you are instructed to acquit the union defendants unless you find that in the making and carrying out of such agreement the unions were not acting in their own self-interest and to carry out their own labor objectives."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein:

67. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 76 requested by [1198] these defendants, as follows:

"An attempt to unionize non-union workers and improve working conditions of labor employed in an industry involves a labor dispute within the meaning of the Norris-LaGuardia Act, and such activity on the part of a labor union is therefore exempted from the operation of the Sherman Act, and does not violate that Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

68. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 77 requested by these defendants, as follows:

"You are instructed that a labor dispute includes any controversy covering terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee. A person is participating or interested in a labor dispute if he is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation."

The exception taken ~~is~~ quoted in Assignment No. 57, and by this reference is incorporated herein.

69. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 78 requested by these defendants, as follows:

"In determining whether a case involves or grows out of a labor dispute the words 'terms or conditions [1199] of employment' are not limited to meaning only the ordinary case where one person hires out to another for a stipulated wage or salary. Employment means act of employing or state of being employed; that which engages or occupies or which consumes time or attention. A case involves or

grows out of a labor dispute when it involves persons engaged in the same industry, trade, craft or occupation, or who have direct or indirect interests therein and a person or association shall be held to be participating or interested in a labor dispute if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs. The term 'labor dispute' includes any controversy concerning terms or conditions of employment.

"You are, therefore, instructed that the agreement of September 21, 1936 between employers and the union organizations which resulted from negotiations to fix terms and conditions of employment involved and grew out of a labor dispute and the making of such agreement on the part of the union defendants was not a violation of the Sherman Act. You are further instructed that the carrying out of and enforcement of such agreement by the union defendants through peaceful means such as picketing, strikes or threats to strike would not violate the Sherman Act on the part of the union defendants. You are further instructed that a conspiracy or combination to accomplish what is lawful by lawful acts or agreements on the part of an alleged conspirator cannot be unlawful."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

70. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 79 requested by these defendants, as follows: [1200]

"You are instructed that if the agreement of September 21, 1936 between the union defendants and employers was made after or as a result of a controversy or dispute as to wages and conditions of employment and the union defendants demanded or wanted the provision thereof that no material should be purchased or work done thereon which had been manufactured or distributed under rates of wage and working conditions not conforming to such agreement, in order to establish a uniform condition of labor conditions, unionize other mills in the industry, gain jobs or better wages, or for any other legitimate purpose of a labor organization, you should acquit the union defendants for then neither the making of said agreement, nor any renewal thereof, nor the carrying out of such an agreement by the means charged in the indictment, is unlawful on the part of the union defendants."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

71. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 80 requested by these defendants, as follows:

"You are instructed that if the agreements between employers and employees, and any ac-

tivities of the labor defendants pursuant thereto arose from a labor dispute or labor disputes, then such agreements or activities on the part of the labor defendants are not unlawful as to such labor defendants, regardless of their intent and regardless of the intent of the defendant employers with whom they are charged with having conspired to violate the Sherman Act, and if such agreements or activities are the result of labor disputes, then you are instructed to acquit the union defendants." [1201]

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

72. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 68 requested by the employer defendants, as follows:

"You are instructed that even if you find that defendant manufacturers entered into an agreement with defendant unions to purchase only millwork and patterned lumber manufactured under certain specified conditions, or to buy them only from union shops, if such agreement was one of the terms or conditions of employment arising out of a labor dispute between them, such agreement would not be a violation of the Sherman Anti-Trust Law,"

to which refusal defendants excepted, as follows:

"And we except to the failure to give the instructions proposed * * * the instructions based upon the Norris-LaGuardia Act, * * * 68 based

upon a definition of "a labor dispute, taken from the Hinton case. That is also Instructions 69, 70 and 71.

73. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 69 requested by the employer defendants, as follows:

"You are instructed that if you find that defendant manufacturers purchased only mill-work and patterned lumber manufactured under certain specified conditions, or only from manufacturers located in the San Francisco Bay Area, pursuant to an agreement with defendant unions concerning terms or conditions of employment arising out of a labor dispute, then the defendants would, upon such facts, be not guilty of a violation of the Sherman Act."

The exception taken is quoted in Assignment No. 72, and by this reference is incorporated herein. [1202]

74. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 70 requested by the employer defendants, as follows:

"A labor dispute may be defined as a controversy concerning terms or conditions of employment.

"A controversy by defendant manufacturers with defendant unions concerning whether defendant manufacturers should purchase mill-

work and patterned lumber manufactured under certain specified conditions would be a controversy concerning terms of employment, and therefore, a labor dispute."

The exception taken is quoted in Assignment No. 72, and by this reference is incorporated herein.

75. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 71 requested by the employer defendants, as follows:

"You are instructed that a contract concerning terms or conditions of employment between organizations of employers and organizations of employees, arising or growing out of a labor dispute, is not a violation of the Sherman Anti-Trust Act."

"A provision in a contract, arising out of a labor dispute, requiring defendants to purchase only material that was produced under certain specified conditions would be one concerning terms or conditions of employment."

The exception taken is quoted in Assignment No. 72, and by this reference is incorporated herein.

76. The Court erred in instructing the jury, as follows:

"Labor unions or their members may join together in promoting their self-interest, even though their acts in so doing may result in an undue obstruction of inter- [1203] state commerce. But they can do this only so long as

they act in their self-interest and do not combine with non-labor groups. Here the Government charges that the labor union defendants combined and conspired with the non-labor defendants in entering into and doing the things complained of, which charge, if true, is a violation of the Sherman Act. So, if any one or more of the labor union defendants combined and conspired with any one or more of the non-labor defendants, including those pleading *nolo contendere*, to do the things that the Government charges here, even though the motive of the labor union defendants was to promote their self-interest, you must find the defendants, or any of them, who so combined and conspired, guilty as charged."

to which defendants excepted as follows:

"I also except to that portion of your Honor's charge which in effect stated that the mere fact of an agreement with a non-labor defendant, under the circumstances described in your Honor's charge would amount to a violation of the statute; also in that connection, the statement, in effect, that to promote self-interest was no defense."

The exception was well taken because such instruction was erroneous in that it charged that a labor defendant would be guilty if he or it combined and conspired with a non-labor defendant to do an act resulting in an obstruction to interstate

commerce even though the motive of the labor defendant was to promote self-interest, thereby denying efficacy to the Clayton Act, 38 Stat. 730, and the Norris-LaGuardia Act, 47 Stat. 29, in the case of an agreement between employer and employee made solely at the instance of labor to promote its own self-interest and legitimate objectives, contrary to the provisions of the statutes.

77/ The Court erred in instructing the jury, as follows: [1204]

"Some testimony has been heard here concerning the union label of the United Brotherhood of Carpenters and Joiners of America. In this connection, I charge you that whether the millwork and patterned lumber involved in the testimony in this case was manufactured in mills whose employees were members of the United Brotherhood of Carpenters and Joiners of America or of its affiliated unions, or whether such millwork and patterned lumber bore a union label is not to be considered by you. The sole question is whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants."

to which defendants excepted as follows:

"I also except * * * to that portion of the charge which in substance stated that the pro-

tection of the label or the use or non-uses of the label was not to be considered by the jury."

The exception was well taken because such instruction was erroneous in that it charged the jury that the enforcement of the union label or any other objective of labor was immaterial and withdrew from the consideration of the jury all questions concerning the motives, intent or objects which promoted the acts of the union defendants, so as to eliminate all questions of fact related to a defense under the Clayton Act, 38 Stat. 730, or the Norris-LaGuardia Act, 47 Stat. 29, and denied as a matter of law application of such statutes to the case.

78. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 59 requested by these defendants, as follows:

"This is not a civil case. It is a criminal prosecution [1205] section. In such cases, a criminal intention must accompany the act in order to constitute a crime. And the act itself, while it may be the basis for the inference of a criminal intention by the jury, if unaccompanied by such criminal intent, is not crime."

The exception taken is quoted in assignment No. 57, and by this reference is incorporated herein.

79. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 61 requested by these defendants, as follows:

"Under the penal provisions of the Sherman Act, upon which the indictment in this case is

based, it devolves upon the prosecution to prove beyond a reasonable doubt that the defendants had a criminal intent, and criminal intent means an intent or purpose to do knowingly and wilfully that which is condemned as wrong by the act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

80. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 62 requested by these defendants, as follows:

"You are instructed that intent is a fact to be proved as any other fact; it is the state of mind from which an act is done; it is the motive from which an act springs. While the law presumes that a person intends the natural and probable consequences of acts intentionally done, and that an unlawful act implies an unlawful intent, such presumption does not arise from an act or series of acts which are not of themselves unlawful. The burden of establishing an illegal intent is upon the prosecution and continues throughout the case [1206], until it is proven by the evidence, to the exclusion of reasonable doubt, that an illegal intent exists."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

81. For the reasons stated in the instruction,

the Court erred in refusing to give Instruction No. 65 requested by these defendants, as follows:

"You are instructed that the Sherman Act is not aimed at the policing of interstate transportation or movement of goods. You are instructed that a labor union has a constitutional right to picket any railroad car or other container of products which is considered unfair to union labor because of the conditions of employment under which such products have been produced in order to advertise to the world that such goods are unfair. You are further charged that any person may lawfully decline to work upon or handle such products considered unfair to the labor organization with which he is affiliated and none of such acts is unlawful under the Sherman Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

82. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 66 requested by these defendants, as follows:

"You are instructed that one party to an agreement may violate the Sherman Act, whereas the other party may not because of the difference in intent and motives which may actuate the making of the contract and its performance."

The exception taken is quoted in Assignment No.

57, and by this reference is incorporated herein. [1207]

83. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 67 requested by these defendants, as follows:

"You are instructed that parties to an agreement may enter into it actuated by different motives and intent. You are instructed that if the labor defendants entered into the agreements involved in this case for the purpose of furthering their own interests and labor objectives—and not merely as tools or instruments to carry out some wrongful intent, if any, of the employers, then even though you should find the existence of a wrongful intent on the part of the employers, you are instructed that you must acquit the labor defendants and they are not guilty of the charges contained in the indictment."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

84. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 68 requested by these defendants, as follows:

"You are instructed that as to every individual defendant affiliated with the labor unions you should return a verdict of acquittal unless you find that he was not acting in furtherance of the legitimate objects of his labor union, but on the contrary was acting in combination with

the employer defendants with the intent to restrain interstate commerce in millwork and patterned lumber in order to eliminate competition and effect prices of such interstate commerce."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

85. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 75 requested by [1208] these defendants, as follows:

"You are instructed that if you believe from the evidence that the union defendants in making and carrying out the agreement of September 21st, 1936 and any renewals thereof were acting in their own self-interest to carry out legitimate objectives of labor, such as the creation of a uniform standard of wages for the industry, the improvement of wages, the gaining of employment or the unionization of other mills in the industry, the fact that some or all of the employers had a different or ulterior motive in making and carrying out the agreement would not make such activities on the part of the union defendants unlawful, but, on the contrary, the carrying out of such objects through the medium of the agreement would be lawful and not a violation of the Sherman Act on the part of the union defendants."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

86. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 81 requested by these defendants, as follows:

"Even though labor agreements or activities intend to restrain or impede interstate shipments, or commerce in the sense that a person must be taken to intend the natural and probably consequence of his act, still such is not a violation of the Sherman Act if such is merely incidental to the enforcement of union demands, for such is not the kind of restraint of trade or commerce which the Sherman Act condemns.

"Restraints on the sale of the employee's services to the employer, however much they curtail the competition among employees, are not in themselves combinations or conspiracies in restraint of trade or commerce under [1209] the Sherman Act. The elimination of price competition based on differences in labor standards is the objective of any national labor union, for in order to render a labor organization effective it must eliminate the competition from non-union goods. You are therefore instructed that if you find that the labor defendants acted in their own self-interest and to carry out their own objectives of labor such as a better wage scale and conditions of employment and more jobs for the union members, they are not guilty of any violation of the Sherman Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

87. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 89 requested by these defendants, as follows:

"The negotiating, making or carrying out by the union defendants of the agreement of September 21, 1936 and the provisions thereof that no work would be done on any material or article having an operation performed on it by mills, saw mills, cabinet shops, or their distributors that do not conform to the rates of wage and working conditions of such agreement, or the negotiating, making or carrying out of any subsequent agreement or understanding continuing such provision of the agreement of September 21, 1936, in effect is lawful and not a violation of the Sherman Act on the part of said union defendants, unless you find that such agreement was not made to carry out the interests and labor objectives of the unions but solely with intent to conspire and combine with the employer defendants to make the unions the instrument of the employer to restrain interstate commerce to eliminate competition from millwork and pat- [1210] terned lumber in interstate commerce."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

88. For the reasons stated in the instruction, the

Court erred in refusing to give Instruction No. 100 requested by these defendants, as follows:

"You are instructed that by the indictment in this case it is charged that defendant unions were not attempting to enforce or protect the right to bargain collectively nor acting in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the alleged combination and conspiracy was alleged to be directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area, and you are instructed that the burden is upon the prosecution to establish to your satisfaction beyond a reasonable doubt and to a moral certainty that such charges are true, or you should acquit the union organizations and each individual union defendant."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

89. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 105 requested by these defendants, as follows:

"You are instructed that as to every individual defendant affiliated with the labor unions you should return a verdict of acquittal unless you find that he was not acting in furtherance of the legitimate objects of his labor union, but

on the contrary was acting in combination with the employer defendants with the [1211] intent to restrain interstate commerce in millwork and patterned lumber."

The exception taken is quoted in Assignment No. 51 and by this reference is incorporated herein.

50. For the reasons stated in the instruction the Court erred in refusing to give Instruction No. 52 requested by the employer defendants, as follows:

"I charge you that there are certain types of crime which are complete when the person intentionally does the acts denounced by the law. There is another class of crime which requires not only the deliberate act but a further aggravation of that act, to-wit: specific intent. The first intent, that is, general intent, is merely to do the act; the second class is to do the act and aggravate it by specific intent that this act may bring about a certain result. In the instant case, the indictment charges the defendants with conspiring and agreeing together for the purpose of unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber as defined in the indictment. Under this charge it is, therefore, necessary for the jury to find that each defendant joined a conspiracy with specific intent of unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber as defined in the indictment."

to which defendants excepted as follows:

"The question of intent, your Honor, in Instructions 52 to 52-D."

91. The Court erred in instructing the jury, as follows:

"The fact that the contracts introduced in evidence [1212] also included a clause which has often been referred to in the course of this trial and which recites that nothing in the contract is to be interpreted as to in any way interfere with any business of the Federal Government or that of an interstate common carrier or any regulation of the Federal Trade Commission or the Sherman Anti-Trust Laws is not conclusive as to the purpose of the contracting parties."

to which defendants excepted, as follows:

"Next and finally, I wish to except * * * to that portion of your Honor's charge which in effect states that the provision with respect to a non-violation of the four phases of the Federal Statutes contained in the several agreements would not be deemed as conclusive with respect to purpose."

The exception was well taken because such instruction was erroneous in that it failed to charge concerning the full legal effect of such clause and the province of the jury in applying such effect to the relevant facts found by the jury.

92. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 92 requested by these defendants, as follows:

"You are instructed that the agreement dated September 21, 1936 was legal on its face."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

93. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 93 requested by these defendants, as follows:

"You are instructed that the agreement of 1938 was legal on its face."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein. [1213]

94. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 94 requested by these defendants, as follows:

"You are instructed that the agreement of 1938 as amended or modified under date of October 18, 1939 was legal on its face."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

95. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 95 requested by these defendants, as follows:

"You are instructed that the agreements effective May 1st, 1939 to May 1, 1940 were legal on their face."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

96. For the reasons stated in the instruction,

the Court erred in refusing to give Instruction No. 96 requested by these defendants, as follows:

"You are instructed that the clause in such contracts that 'Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission or the Sherman Anti-Trust Law' was a lawful provision in such contracts and that any defendant who relied thereon as exempting from the operation of the preceding clauses interstate commerce should be acquitted for reliance on such clause would be inconsistent with an intent to conspire against interstate commerce."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein. [1214]

97. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 97 requested by

"You are instructed that the union defendants have the right to decline to work or agree not to work upon products made by a CIO or a company union in carrying out their own labor objectives."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

98. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 98 requested by these defendants, as follows:

"You are further instructed that in the ex-

ercise of the right of the union defendants to refuse to handle or work on such products considered unfair, the union defendants had the right to picket freight cars containing such material and to advertise to the world the fact that such material was "hot" or unfair."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

99. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 99 requested by these defendants, as follows:

"You are further instructed that where such unfair or "hot" material was found mingled in a shipment with fair or labeled lumber which could not be reached without first removing the unfair lumber, or was so mingled as to attempt a fraud on the aforesaid policy of the union not to handle or work upon such unfair material, then the unions and any individuals affiliated with such unions had the right to refuse to touch or work on the cargo as a whole."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein. [1215]

100. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 2 requested by defendant Alameda County Building and Construction Trades Council, as follows:

"I instruct you that the publication, unaccompanied by violence, of a notice that the employer is unfair to organized labor and re-

requesting the public not to patronize him is an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress."

to which refusal defendants excepted, as follows:

"The defendant, Alameda County Building and Construction Trades Council, asks its exception be noted to your Honor's failure to give Instructions 1 to 13, inclusive, and we ask to concur in the exceptions made by other counsel to the instructions actually given."

101. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 3 requested by defendant Alameda County Building and Construction Trades Council, as follows:

"I instruct you that under the Constitution of the United States and under the Constitution of the State of California, all citizens are guaranteed the right of free speech. I further instruct you that if you find that the defendants or some of them participated in picketing certain places of business, and that such picketing was carried on by peaceful means, then I instruct you that such picketing was an exercise of the right of free speech by those defendants who participated in the picketing."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein. [1216]

102. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No.

4 requested by defendant Alameda County Building and Construction Trades Council, as follows:

"I instruct you that under the law in California, picketing carried on for the purpose of seeing who can be the subject of persuasive inducement is legal. Therefore, I instruct you that if you find that the picketing in this case was conducted for the purpose of peaceful persuasion, then I instruct you that such picketing is legal."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.

103. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 5 requested by defendant Alameda County Building and Construction Trades Council, as follows:

"Under the laws of the State of California, picketing may lawfully be carried on by any group of citizens, and so long as peaceful means are used in connection with the picketing, such picketing is a mere exercise of the right of free speech which is guaranteed to every citizen by the Constitution of the United States and by the Constitution of the State of California."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.

104. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 6 requested by defendant Alameda County Building and Construction Trades Council, as follows:


"I instruct you that under the laws of California, picketing is lawful if carried on by peaceable and per- [1217] suasive means. If you find that the picketing in this case was carried on for the purpose of actually interfering with the peaceable entrance to a place of business, or peaceable exit therefrom, then such picketing was unlawful, but if you find that such picketing was carried on for the purpose of influencing or persuading members of the public by peaceful means, then I instruct you that such picketing was lawful."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.

105. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 7 requested by defendant Alameda County Building and Construction Trades Council, as follows:

"I instruct you that these defendants had a legal right, under the laws of the State of California, to withdraw social and business intercourse with any person or persons, and that they also had the right by all legitimate means, that is to say, by fair publication and fair oral or written persuasion to induce others interested in or sympathetic with their cause to withdraw their social intercourse and business patronage from any such person or persons."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.



106. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 8 requested by defendant Alameda County Building and Construction Trades Council, as follows:

“You have heard the witnesses and the attorneys in this case refer to a boycott carried on by the defendants or some of them against certain places of business. The [1218] Supreme Court of California has defined a boycott as being an organized effort to persuade or coerce, which may be legal or illegal according to the means employed. In other words, and as applied to the facts in this case, the defendants had a legal right to conduct an organized boycott of certain places of business, and in pursuance of the boycott, to endeavor to persuade the public not to patronize the places of business under boycott, provided no illegal means were used in the carrying out of the boycott. Therefore, I instruct you that if you find that the defendants did carry on an organized boycott of such places of business, but that in doing so, they neither committed nor threatened any act of violence, then I instruct you that the boycott was legal.”

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.

107. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 9 requested by defendant Alameda County Building and Construction Trades Council, as follows:

"I instruct you that if you find that the acts committed by the defendants, as shown by the evidence, were in themselves legal, and not wrong, I advise you that those acts are not rendered illegal merely by reason of any bad motive or bad or malicious intent with which such acts were done."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.

108. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 101 requested by these defendants, as follows:

"You are instructed that in determining the intent [1219] with which any union defendant acted it is the policy of the City and County of San Francisco in the letting of contracts for public works and the purchase of public supplies to favor local industry by a price differential and to also favor the employment of local labor."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

109. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 102 requested by these defendants, as follows:

"You are further instructed that activities to obtain the benefit of such local laws and in furtherance of such public policy favoring local products in public contracts or the advocacy of the use of local products as opposed to

outside products } by peaceful, conventional means do not violate the Sherman Act. Such activities are entirely legal so long as illegal means of coercing the exercise of free will are not employed."/

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

110. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 103 requested by these defendants, as follows:

"You are instructed that the advocacy of the use of local products as opposed to outside products, by peaceful, conventional means does not violate the Sherman Act. Such activity is entirely legal so long as illegal means of coercing the exercise of free will are not employed."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

111. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 61 requested by [1220] the employer defendants, as follows:

"You are instructed that under the National Labor Relations Act employers may be compelled to negotiate and bargain collectively with the representatives of their employees," to which refusal defendants excepted, as follows:

"And we except to the failure to give the instructions proposed * * * Instruction 61, that

under the National Labor Relations Act an employer is compelled to bargain collectively."

112. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 62 requested by the employer defendants, as follows:

"You are instructed that the public policy of the United States guarantees full freedom to labor to organize for the purpose of negotiating the terms and conditions of employment and in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

"It is the public policy of the United States to encourage industrial peace by the execution of collective bargaining agreements between labor and employer.

"You are instructed; therefore, to draw no inference of guilt or wrongdoing merely because of the execution between defendants of an agreement respecting wages, hours and working conditions."

113. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 63 requested by the employer defendants, as follows:

"You are instructed that employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representa- [1221] tives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

114. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 65 requested by the employer defendants, as follows:

"You are instructed that under the National Labor Relations Act it would be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees."

to which refusal defendants excepted, as follows:

"And we except to the failure to give the instructions proposed * * * Instruction 65, based upon that act?"

115. For the reasons stated in the instruction, the Court erred in refusing to give instruction No. 27 requested by the employer defendants, as follows:

"The testimony of an accomplice is not to be judged by the same standard as the testimony of any other witness, but such evidence is to be acted upon with great caution, and is subject to grave suspicion."

to which refusal defendants excepted, as follows:

"We except, your Honor, to the failure to give proposed Instructions 27 to 31, inclusive, on the subject matter of accomplices."

116. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 28 requested by the employer defendants, as follows:

"I charge you that if any witness, who is an accomplice within the meaning of that term as I have defined it to you, has appeared in this

case and testified on behalf of the Government, then, I charge you that you should view the testimony of such witness with distrust [1222] and caution."

The exception taken is quoted in Assignment No. 115, and by this reference is incorporated herein.

117. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 30 requested by the employer defendants, as follows:

"An accomplice is one who is liable to prosecution for the identical offense charged against the defendants on trial in the cause in which the testimony of the accomplice is given. I further charge you that it is for you to determine, as a question of fact in this case, whether or not a particular witness is an accomplice, as I have heretofore defined that term to you. If you do find that a witness who has testified in this cause is an accomplice, then I instruct you that the testimony of such an accomplice ought to be viewed with distrust."

The exception taken is quoted in Assignment No. 115, and by this reference is incorporated herein.

118. The Court erred in denying the motion of these defendants for a new trial.

119. The Court erred in denying the motions of these defendants in arrest of judgment.

120. The Court erred in sustaining plaintiff's demurrer to the Plea in Abatement by Certain Defendants, made and filed by defendants The Bay

Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, and the individual defendants Dave Ryan, Charles Roe, Charles Helbing, W. P. Kelly, W. L. Wilcox, Walter O'Leary, C. H. Irish and Emil H. Ovenberg, in that said plea sufficiently alleged facts [1223] to show that the evidence upon which the indictment was found was obtained in direct violation or contravention of the rights of said defendants under the Fourth and Fifth Amendments to the Constitution of the United States, and that they had been immunized from prosecution under 15 U. S. C. A., Section 32.

121. The Court erred in denying the motion of D. H. Ryan and Bay Counties District Council of Carpenters to quash, vacate and suppress the subpoena issued to them under date of April 11, 1940, which compelled the production of their books, records, papers and documents before the Grand Jury which returned the indictment, and resulted in the use of such books, records, papers and documents in finding the indictment and later in the trial of the case contrary to the Fourth and Fifth Amendments to the Constitution of the United States.

122. The Court erred in denying the motion of Local Union No. 550, United Brotherhood of Car-

penters and Joiners of America to quash, vacate and suppress the subpoena issued to it under date of April 11, 1940, which compelled the production of its books, records, papers and documents before the Grand Jury which returned the indictment, and resulted in the use of such books, records, papers and documents in finding the indictment and later in the trial of the case contrary to the Fourth and Fifth Amendments to the Constitution of the United States.

123. The Court erred in denying the motion of Local Union No. 42, United Brotherhood of Carpenters and Joiners of America to quash, vacate and suppress the subpoena issued to it under date of April 11, 1940, which compelled the production of its books, records, papers and documents before the Grand Jury which returned the indictment, and resulted in the use of such books, records, papers and documents in finding the in-[1224] dictment and later in the trial of the case contrary to the Fourth and Fifth Amendments to the Constitution of the United States.

124. The Court erred in denying the motion of W. C. O'Leary to quash, vacate and suppress the subpoena addressed to Local No. 550, United Brotherhood of Carpenters and Joiners of America under date of April 11, 1940, and served upon him, which compelled the production of the books, papers, records and documents of said local, of which he was a member, before the Grand Jury which returned the indictment, and resulted in the

use of such books, records, papers and documents in finding the indictment and later in the trial of the case contrary to the Fourth and Fifth Amendments to the Constitution of the United States.

125. The Court erred in denying the motion of Charles Helbing to quash, vacate and suppress the subpoena addressed to Local No. 42, United Brotherhood of Carpenters and Joiners of America under the date of April 11, 1940, and served upon him, which compelled the production of the books, papers, records and documents of said local, of which he was a member, before the Grand Jury which returned the indictment, and resulted in the use of such books, records, papers and documents in finding the indictment and later in the trial of the case contrary to the Fourth and Fifth Amendments to the Constitution of the United States.

126. The Court erred in requiring the production under subpoena duces tecum and identification by the recording secretary of the private books, papers and documents of defendant United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, as follows:

"Mr. Howland: Q. I will ask you, Mr. Fromm, whether or not in your official capacity you have custody and access [1225] to any of the records and documents of the United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42?

"A. Yes.

"Mr. Howard: I ask that the answer go out for the purpose of the objection.

"The Court: Yes, it may go out.

"Mr. Howard: I wish to object to this question and object to all further questions of this witness on the ground that he, as identified by the record, is a member of Local No. 42, one of the defendants charged in the indictment and on trial, here, and as such member of an unincorporated association is required in violation of the Fifth Amendment to give testimony against himself.

"The Court: Overruled.

"Mr. Howard: May we have an exception?

"The Court: Yes.

"Mr. Howland: Q. Have you examined these books and records of which you have custody and access for the purpose of collecting therefrom the papers called for by the subpoena duces tecum addressed to Local 42?

"A. Yes.

"Mr. Howard: May it be understood that we have the same objection and exception?

"The Court: Yes, the same objection and an exception. The objection is overruled and an exception noted.

"Mr. Howland: Q. Referring to paragraph No. 1 of that subpoena, Mr. Fromm, do you have with you any of the documents called for therein, and that paragraph reads, constitution, charter, articles of association, and by-laws of the addressee of this subpoena?

"A. I have.

"Q. Will you produce them, please?

"Mr. Howard: If your Honor please, at this time I wish to object to the question and the production through [1226] this witness of any books, papers, or documents of Local No. 42 on the following grounds, first, that such documents or papers are the private books, documents and papers of this defendant unincorporated association, and of each individual defendant member of that association who is a defendant herein. The requirement of the production of those private books, documents and papers is in violation of the Fourth Amendment in that it constitutes an unlawful search and seizure, and it violates the Fifth Amendment to the Constitution in that it requires the association defendant, and each member defendant to give testimony against himself. Now, if your Honor please, I think that this objection raises basic questions that will go to the whole line of testimony.

"The Court: Yes.

"Mr. Howard: We are prepared to argue it, if your Honor wishes.

"The Court: I do not care to hear any argument. The objection is overruled.

"Mr. Howard: May we have the same stipulation as to the entire line of testimony?

"The Court: Yes.

"Mr. Howard: And an exception.

"The Court: Yes.

"Mr. Howland: Q. Are they here?

"A. Yes.

"Q. Have you got them?

"A. Shall I produce them?

"Q. If you have them, produce them."

Thereupon the witness produced and identified the constitution, charter, articles of association and by-laws, minute books, papers, correspondence, records and documents of said defendant.

127. The Court erred in requiring the production [1227] under subpoena duces tecum and identification by the recording secretary of the private books, papers and documents of defendant United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, as follows:

"By Mr. Howland:.

"I am Recording Secretary of Millmen's Union Local No. 550 and have held that position for approximately a year and a half. I have custody and access to the records and files of said Local, and I have books and records and other papers of Local 550 which have been subpoenaed.

"Mr. Howland: Q. Do you have any of the books and records and other papers of Local 550 which have been subpoenaed?

"A. I have.

"Mr. Howard: May I have the answer go out until I object?

"The Court: The answer may go out.

"Mr. Howard: I guess that is a superabun-

dance of precaution but it is understood the same objection goes now to this—

“The Court: Yes, yes.”

Thereupon the witness produced and identified the constitution, charter, articles of association and by-laws, minute books, papers, correspondence, records and documents of said defendant.

128. The Court erred in requiring the production under subpoena duces tecum and identification of the private books, papers and documents of defendant United Brotherhood of Carpenters and Joiners of America, as follows:

“Thereupon, Mr. Howland called upon the United Brotherhood of Carpenters and Joiners of America to respond to the subpoena. [1228]

“Mr. Tuttle: I will call attention to the fact that this subpoena is directed solely to the United Brotherhood. The papers called for are in the hands or custody of thirty-six persons in Indianapolis. We have made these arrangements, which I hope will be satisfactory to your Honor and counsel, that Mr. Joseph O. Carson, II., who is an attorney in the office of his father, who is general counsel for the United Brotherhood, has gathered those papers together and we make no point that they are authentic papers from the files of the United Brotherhood. We have them here, so that if counsel is willing Mr. Carson can take the witness stand, or I can furnish you with the papers you ask for.

"The Court: Yes.

"Mr. Tuttle: Either course will be agreeable to us.

"The Court: Either course will be agreeable to the Court.

"Mr. Tuttle: If you put Mr. Carson on the stand you will get the papers quicker. Your Honor will appreciate that we have the same objection as we made before?

"The Court: Yes, let that be the understanding.

"Mr. Tuttle: The same ruling and exception."

Thereupon the witness produced and identified the constitution, charter, articles of association and by-laws, minute books, papers, correspondence, records and documents of said defendant.

129. The Court erred in requiring the production under subpoena duces tecum and identification of the private books, papers and documents of defendant Bay Counties District Council of Carpenters, as follows:

"Thereupon the Government called upon Bay Counties District Council of Carpenters to answer to the subpoena [1229] duces tecum with the understanding that the same objection should be reserved."

Thereupon the identification was stipulated as to minutes, correspondence, constitution and by-laws, miscellaneous papers, files and agreements of said defendant.

130. The Court erred in sustaining plaintiff's demurrer to the further and separate Plea in Abatement By Defendant Dave Ryan, in that said plea sufficiently alleged facts to show that by reason of having been compelled to testify concerning the transactions, matters and things upon which the indictment was found, said defendant was entitled to immunity from prosecution under the provisions of Section 32, 15 U.S.C.A.

131. The Court erred in denying on the merits the claim of immunity of defendant Dave Ryan, under 15 U.S.C.A., Section 32, in that the evidence showed that said defendant was compelled to testify and produce evidence concerning the transactions, matters and things upon which the indictment was found.

132. The Court erred as to the defendant Dave Ryan, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the conclusions of law therein are not supported by the findings of fact for the reason that the facts found conclusively show said defendant was compelled to testify concerning the transactions, matters and things upon which the indictment was found and the prosecution was barred under 15 U.S.C.A., Section 32.

133. The Court erred as to the defendant Dave Ryan, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the evidence is insufficient, as a matter of law, to sustain the findings of fact that "VI. Defendant

Ryan in his testimony identified through his signature thereon a certain document as a contract covering wages, hours, and working conditions, signed by the United Brotherhood of [1230] Carpenters and Joiners of America, Locals Nos. 42 and 550, and the Bay Counties District Council of Carpenters by David H. Ryan, Secretary-Treasurer, dated September 21, 1936;" that the evidence establishes without conflict that he was required to and did testify as to his signature on the contract of September 21, 1936, signed by the Bay Counties District Council of Carpenters by D. H. Ryan; that such contract was already in evidence as Government's Exhibit No. 288 and that he was required to and did testify how the contract was negotiated and that he personally participated in the negotiations.

134. The Court erred as to the defendant Dave Ryan, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the evidence is insufficient, as a matter of law, to sustain the finding of fact that "VII. Defendant Ryan identified through his signature thereon a contract dated August 10, 1939 entered into between the Lumber Products Association, Inc., and the United Brotherhood of Carpenters and Joiners of America, Locals Nos. 42 and 550, and the Bay Counties District Council of Carpenters;" that the evidence establishes without conflict that the contract dated August 10, 1939, was Government's Exhibit 297 and he was required to and did

testify as to his signature thereon and that he sat in on the negotiations leading up to the signing of the agreement.

135. The Court erred in sustaining plaintiff's demurrer to the further and separate Plea in Abatement By Defendant W. C. O'Leary, in that said plea sufficiently alleged facts to show that by reason of having been compelled to testify concerning the transactions, matters and things upon which the indictment was found, said defendant was entitled to immunity from prosecution under the provisions of Section 32, 15 U.S.C.A. [1231]

136. The Court erred in denying on the merits the claim of immunity of defendant W. C. O'Leary, under 15 U.S.C.A., Section 32, in that the evidence showed that said defendant was compelled to testify and produce evidence concerning the transactions, matters and things upon which the indictment was found.

137. The Court erred as to the defendant W. C. O'Leary, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the conclusions of law therein are not supported by the findings of fact for the reason that the facts found conclusively show said defendant was compelled to testify concerning the transactions, matters and things upon which the indictment was found and the prosecution was barred under 15 U.S.C.A., Section 32.

138. The Court erred as to the defendant W. C.

O'Leary, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the evidence is insufficient, as a matter of law, to sustain the finding of fact that "XVIII. Defendant O'Leary testified that during the course of the negotiations with the employer organizations during 1939 there was no discussion with regard to the so-called restrictive clause;" in that the evidence shows the witness was interrogated and testified as follows:

"Q. As a matter of fact, you are at present negotiating, are you not, with the mill owners?

"A. We are, yes.

"Q. Those negotiations are being carried on by your Conference Committee, is that correct? A. Negotiating Committee.

"Q. By your Negotiating Committee. In the course of these negotiations with the employer organizations, has there been any discussion with regard to the restrictive clauses in the contracts?

"A. When you say "restrictive clauses" you mean the re- [1232] striction in the use of certain kinds of mill work, whether it be union, non-union, or—

"Q. More particularly, the restriction with regard to the permission—or, with regard to the exclusion of mill work that is patterned outside of the six counties.

"A. No, I don't think there is anything in

it other than the general union condition that we want to prevail.

"Q. Well, I asked you if there has been any discussion. Has it been mentioned?

"A. Well, now, whether it was mentioned at their meetings, or not, I don't know. I don't think so.

"Q. Well, you have been perfectly frank here, and stated that the unions did not want it to come in. A. No, we don't.

"Q. And is that still the expression of the union's attitude on it? A. Oh, yes.

"Q. Now, in these negotiations looking toward the signing of a new contract, what has been the employer organization's attitude with regard to those particular clauses? Do they want them in the agreement or out of the agreement?

"A. They leave that to us. When it is mentioned, "That is up to you fellows, if you want to continue the wages you have got here, you have got to do it yourself. We aren't doing that." That is their answer to us on that."

139. The Court erred in sustaining plaintiff's demurrer to the further and separate Plea in Abatement By Defendant Charles Helbing, in that said plea sufficiently alleged facts to show that by reason of having been compelled to testify concerning the transactions, matters and things upon which the indictment was found, said defendant

was entitled to immunity from prosecution under the provisions of Section 32, 15 U.S.C.A. [1233]

140. The Court erred in denying on the merits the claim of immunity of defendant Charles Helbing under 15 U.S.C.A., Section 32, in that the evidence showed that said defendant was compelled to testify and produce evidence concerning the transactions, matters and things upon which the indictment was found.

141. The Court erred as to the defendant Charles Helbing, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the conclusions of law therein are not supported by the findings of fact for the reason that the facts found conclusively show said defendant was compelled to testify concerning the transactions, matters and things upon which the indictment was found and the prosecution was barred under 15 U.S.C.A., Section 32.

142. The Court erred as to the defendant Charles Helbing, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the evidence is insufficient, as a matter of law, to sustain the finding of fact that "XX. * * * Said defendant identified the September, 1939 contract through his signature thereon * * *"; in that the evidence establishes without conflict that he was required to and did testify that it was his signature on Government's Exhibit N 279 which was an agreement with shops and

mills in this locality and that his signature was affixed as one of the negotiators negotiating the agreement.

Dated: June 13th, 1942.

JOSEPH O. CARSON, II,
HARRY N. ROUTZOHN,
HUGH K. McKEVITT,
JACK M. HOWARD,

Attorneys for said defendants
and appellants.

Receipt of a copy of the within Assignment of Errors is hereby admitted this _____ Day of June, 1942.

WALLACE HOWLAND,

Attorneys for plaintiff United
States of America.

[Endorsed]: Filed Jun. 13, 1942. [1234]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS BY THE UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, DEFENDANT
AND APPELLANT.

Comes Now the defendant-appellant, The United Brotherhood of Carpenters and Joiners of America, and specifies that in the proceedings before the District Court manifest errors occurred to its prejudice; and it hereby assigns the following errors

which have occurred through rulings, instructions and decisions by the District Court, to each of which this defendant-appellant duly excepted, it having been stipulated between the parties and understood with the Court at the trial as follows: [4235]

"Mr. Howard: May we have an exception?

"The Court: Yes, I am willing to let it be understood that an exception will be noted to every ruling of the Court, so that you won't have to ask me that question every time. Is that agreeable to you?

"Mr. Howard: Yes.

"Mr. Faulkner: Does the Government acquiesce in that statement?

"The Court: I say I am willing that the record should show that an exception has been made to every ruling made in this case on behalf of each and every defendant.

"Mr. Faulkner: That is agreeable to Counsel for the Government?

"Mr. Howard: That is agreeable to the Government.

"The Court: You will understand that there is no necessity of voicing any exception whatever."

that the exception so taken and reserved is by this reference incorporated in each assignment of error to which it is applicable as though quoted separately therein:

1. The Court erred in overruling the demurrer

of this defendant to the indictment, in that the indictment fails to state facts constituting an offense on the part of this defendant.

2. The Court erred in denying the motion of this defendant, made at the opening of the trial, to dismiss the indictment, in that the indictment fails to state facts constituting an offense on the part of this defendant.

3. The Court erred and exceeded proper discretion in denying the demand and motion of this defendant for a bill of particulars, in that the indictment is so general and uncertain as to the complicity of this defendant and its relation to the subject matter that the particulars demanded [1236] were necessary to enable it properly to prepare and present its defense.

4. The Court erred in denying the motion of this defendant, made at the conclusion of the plaintiff's case, to dismiss the indictment or for a directed verdict of acquittal, because of the insufficiency of the evidence to show the commission by the defendant of the offense charged against it.

5. The Court erred in denying the motion of this defendant, made at the conclusion of the whole case, to dismiss the indictment or for a directed verdict of acquittal, because of the insufficiency of the evidence to show the commission by the defendant of the offense charged against it.

6. The Court erred in holding that there was sufficient evidence against this defendant to warrant submission to the jury of the plaintiff's alleged case against it.

7. The Court erred in excluding the testimony of defendants' witness, Kenneth Davis, concerning the affiliation or connection of certain firms in the Northwest with this defendant, and concerning the matter of their right to use its label; and in sustaining the plaintiff's objection to defendants' offer of proof through such witness. The subject matter of this assignment and the substance of the testimony and proof referred to are fully set forth in Assignment of Error No. 40 made by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

8. The Court erred in excluding the testimony of the defendants' witness, Kenneth Davis, concerning the organization of the lumber and sawmills in the States of Washington and Oregon by the A. F. of L. and C. I. O. during [1237] the years 1933 to 1940, inclusive, and in sustaining the plaintiff's objection to defendants' offer of proof through such witness. The subject matter of this assignment and the substance of the testimony and proof referred to are fully set forth in Assignment of Error No. 41 filed by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

9. The Court erred in sustaining plaintiff's objection to, and in refusing to admit in evidence, circular letter, defendants' Exhibit 2-M for identification, and in sustaining the plaintiff's objection to and in striking out the testimony of the witness, Joseph F. Cambiano, as a foundation for the admission of such exhibit. The subject matter of this assignment and the substance of the testimony referred to are fully set forth in Assignment of Error No. 42 filed by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

10. The Court erred in sustaining plaintiff's objection to, and in refusing to admit in evidence, defendants' Exhibit 2-N for identification. The subject matter of this assignment and the substance of the testimony referred to are fully set forth in Assignment of Error No. 43 filed by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other defendants. That Assignment of Error is adopted by this defendant and made a part hereof. [1238]

11. The Court erred in sustaining plaintiff's objection to, and in refusing to admit in evidence, defendants' Exhibit 2-O for identification. The subject matter of this assignment and the substance of the testimony referred to are fully set forth in As-

assignment of Error No. 44 filed by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

12. The Court erred in sustaining plaintiff's objection to, and in refusing to admit in evidence defendants' Exhibit 2-P for identification. The subject matter of this assignment and the substance of the testimony referred to are fully set forth in Assignment of Error No. 45 filed by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

13. The Court erred in sustaining plaintiff's objection to, and in striking out, the testimony of the defendants' witness, Joseph F. Cambiano, as follows:

"Q. Have you ever at any time entered into an agreement with any intention whatsoever of violating the Interstate Commerce Law?

"A. No, I have not.

"Mr. Clark: Just a minute, we move to strike out the answer as intent is immaterial.

"The Court: Let it go out. The objection is sustained."

14. The Court erred in excluding the testimony of the defendants' witness, Joseph F. Cambiano, as follows: [1239].

"Q. There is a dispute on now, is there not, in 1941, over the wage scale?

"Mr. Clark: We object to that as immaterial, and as calling for the conclusion of the witness.

"The Court: The objection is sustained.

"Mr. Rontzohn: Q. Is there an arbitration going on at the present time over the wage scale between the employers and the employees?

"Mr. Clark: We object to that as being immaterial to any issue in the case.

"The Court: Sustained."

15. Statements made by plaintiff's counsel during the trial and in the presence of the jury relative to certain defendants who had made pleas of nolo contendere, and referring to such as pleas of guilt, constituted prejudicial misconduct; and the Court erred in overruling the objections of this defendant and of other defendants thereto. The subject matter of this assignment and the substance of the statements referred to are fully set forth in Assignment of Error No. 48 filed by the defendants-appellants. The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

16. The Court erred in instructing the jury relative to the pleas of nolo contendere by certain defendants and in characterizing such pleas as admis-

sions of guilt. The subject matter of this assignment and the substance of the instructions referred to are fully set forth in Assignment of Error No. 49 filed by the defendant-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this [1240] defendant and made a part hereof.

17. This defendant joined with the defendants The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and with other labor defendants, in objecting and excepting to certain instructions given by the Court to the jury. Certain instructions so objected and excepted to are set forth seriatim and separately in the Assignments of Error Nos. 50, 54, 55, 56, 76 and 91. This defendant adopts and here repeats as its own each of the said Assignments of Error separately, with the same force and effect as if here set forth and repeated verbatim, consecutively and with separate sequential numbers. This course is taken by this defendant in order to avoid needless repetition and to protect the record on appeal from unnecessary expansion.

18. Certain requested instructions to the jury, identified by sequential numbers were duly submitted to the Court in the course of the trial by this defendant and by other labor defendants; and certain of such instructions the Court refused to give and thereby, as this defendant avers, erred to

the prejudice of this defendant. The requested instructions which the Court so refused to give are set forth verbatim and separately in Assignments of Error Nos. 51, 52, 53, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 92, 93, 94, 95, 96, 97, 98, 99, 108, 109 and 110, both inclusive, by The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America and other labor defendants. This defendant adopts and here repeats as its own each of the said Assignments of Error separately, with the same force and effect as if here set forth and repeated verbatim, consecutively and with separate sequential numbers.

19. The Court erred in instructing the jury as [1241] follows:

Some testimony has been heard here concerning the union label of the United Brotherhood of Carpenters and Joiners of America. In this connection, I charge you that whether the millwork and patterned lumber involved in the testimony in this case was manufactured in mills whose employees were members of the United Brotherhood of Carpenters and Joiners of America or of its affiliated unions, or whether such millwork and patterned lumber bore a union label is ~~not to be considered by~~ you. The sole question is whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate

commerce pursuant to an understanding between the labor union defendants and the non-labor defendants.

to which this defendant and appellant excepted as follows:

"I also except * * * to that portion of the charge which in substance stated that the protection of the label or the use or non-uses of the label was not to be considered by the jury."

Such instruction was erroneous in that it charged the jury that the enforcement of the union label or any other objective of labor was immaterial and withdrew from the consideration of the jury all questions concerning the motives, intent or objects which prompted the acts of the union defendants, so as to eliminate all questions of fact related to a defense under the Clayton Act, 38 Stat. 730, or the Norris-LaGuardia Act, 47 Stat. 29, and denied as a matter of law application of such statutes to the case.

20. The Court erred in refusing to give certain instructions requested by the defendant Alameda County Building and Construction Trades Council, which requests for [1242] instructions inured at the trial to the benefit of all the labor defendants including this defendant, The United Brotherhood of Carpenters and Joiners of America. In the afore-said Assignments of Error filed by The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America.

and other labor defendants, these requested instructions and the respective numbers by which they were identified at the trial are separately set forth in various Assignments of Error numbered respectively 100 to 167, both inclusive, and error is assigned separately in the case of each such refusal to give the instruction requested. In order to save the record on appeal from undue expansion and repetition, this defendant The United Brotherhood of Carpenters and Joiners of America now hereby adopts separately each and all of the Assignments of Error just mentioned in this paragraph, with the same force and effect as if each of them was here separately set forth and repeated verbatim, consecutively and with separate sequential numbers; and this defendant claims that the Court erred in each case of refusal to give such instructions and that it was prejudiced by each such refusal of the Court.

21. The Court erred in refusing to give certain instructions requested by the group of the defendants represented at the trial by Mr. Harold C. Faulkner, as trial counsel (to-wit, Brass & Kuhn Company, et al.), which requests for instruction inured at the trial to the benefit of all the labor defendants, including this defendant The United Brotherhood of Carpenters and Joiners of America. In the aforesaid Assignments of Error filed by The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants, these re-

requested instructions and the respective numbers by which [1243] they were identified at the trial are set forth in various Assignments of Error numbered respectively 90, and 111 to 117, both inclusive, and error is assigned separately in the case of each such refusal to give the instruction requested. In order to save the record on appeal from undue expansion and repetition, this defendant The United Brotherhood of Carpenters and Joiners of America now hereby adopts separately each and all of the Assignments of Error just mentioned in this paragraph, with the same force and effect as if each of them were here separately set forth and repeated verbatim consecutively and with separate sequential numbers; and this defendant claims that the Court erred in each case of refusal to give such instructions and that it was prejudiced by each such refusal of the Court.

22. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 37 requested by this defendant, as follows:

"You are instructed that an international trade union, that is, the international body, is not responsible for the acts of a district organization or union affiliated with and chartered by it except as such international body expressly authorizes the act of the local union or association. The International Brotherhood of Carpenters and Joiners of America cannot be found guilty in this case unless you find that it authorized acts to be done, or performed such

acts with the intent of restraining interstate commerce pursuant to a conspiracy with the employer defendants to act as the instrument of the employers to suppress competition," to which refusal this defendant excepted, as follows:

"Referring to the proposed instructions of the [124] union defendants, we wish to except to the Court's not giving Instructions * * * 57 * * * relating to the binding effect of representatives acts on the union defendant organizations, and with reference to the knowledge of the union organizations of those acts."

23. The Court erred in instructing the jury as follows:

"The indictment charges a misdemeanor, and was returned by the Grand Jury on June 26, 1940. It charges that the defendants entered into a combination to restrain interstate commerce in millwork and patterned lumber, as defined in the indictment. In this connection, you are instructed that this definition includes not only millwork as that word is commonly understood, but also "lumber which has been paneled, cut, or assembled into standard or special patterns and forms . . . and such other wood products prepared for use in the construction of dwellings, buildings, fixtures, and store fronts." The definition in the indictment of millwork and patterned lumber also in-

cludes wood products "used in the construction of prefabricated buildings!,"

to which this defendant excepted, as follows:

"I also except to your Honor's definition of millwork and patterned lumber as stated in your charge."

This exception was well taken in that the Court's ruling as to the interpretation of the reference and definition in the indictment as to millwork and patterned lumber was erroneous. See the extended discussion in the course of the trial as to the proper interpretation and meaning of the references and definitions in the indictment on the subject of millwork and patterned lumber. [1245]

24. At the trial the Court erred in certain rulings concerning the admission or exclusion of evidence to the prejudice of this defendant. These rulings are set forth in the aforesaid Assignments of Error filed by The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America and other labor defendants and numbered therein respectively 7 to 39 inclusive, and error is assigned separately in the case of each such ruling. It was agreed to the trial that all rulings upon the admission or exclusion of evidence should be deemed excepted to by the defendants to whom the ruling was adverse, without utterance of the formal word "exception" in each case and by the several defendants adversely affected thereby; and it was further agreed that an objection taken by any one of the labor defendants

should inure to the benefit of all, including this defendant The United Brotherhood of Carpenters and Joiners of America. In order to save the record on appeal from undue expansion and repetition, this defendant The United Brotherhood of Carpenters and Joiners of America now hereby adopts separately each and all of the Assignments of Error just mentioned in this paragraph, with the same force and effect as if each of them were here separately set forth and repeated verbatim, consecutively and with separate sequential numbers; and this defendant claims that the Court erred in the case of each such ruling and that it was prejudiced by each such ruling.

25. At the trial the Court erred in certain rulings whereby it required the production under subpoena duces tecum and identification of private books, papers and documents of this defendant The United Brotherhood of Carpenters and Joiners of America and of the defendants United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Mill- [1246] men's Union No. 550, and Bay Counties District Council of Carpenters, all of which defendants are unincorporated associations; that such rulings are set forth in the aforesaid Assignments of Error filed by The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America and other labor defendants and numbered therein respectively 126 to 129, inclusive.

and error is assigned separately in the case of each such ruling and this defendant hereby adopts separately each and all of said assignments just mentioned in this paragraph with the same force and effect as if each of them were here separately set forth and repeated verbatim and with separate sequential numbers; and this defendant claims that the Court erred in the case of each such ruling and that it was prejudiced by each such ruling.

26. The Court erred in denying the motion of this defendant for a new trial.

27. The Court erred in denying the motion of this defendant in arrest of judgment.

THE UNITED BROTHERHOOD
OF CARPENTERS AND JOIN-
ERS OF AMERICA, by

CHARLES H. TUTTLE

JOSEPH O. CARSON

THOMAS E. KERWIN

HUGH K. McKEVITT

Its Counsel.

Receipt of a copy of the within Assignment of Errors is hereby admitted this Day of June, 1942.

WALLACE HOWLAND,

Attorneys for plaintiff United
States of America.

[Endorsed]: Filed Jun. 13, 1942. [1247]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS BY DEFENDANT
AND APPELLANT ALAMEDA COUNTY
BUILDING & CONSTRUCTION TRADES
COUNCIL.

Comes Now the defendant and appellant, Alameda County Building and Construction Trades Council and specifies that in the proceedings before the District Court manifest errors occurred to the prejudice of said appellant and said appellant hereby assigns the following errors, which said appellant avers occurred through rulings to each of which said appellant duly excepted, it having been stipulated by the parties with the approval of the court as follows:

"Mr. Howard: May we have an exception?

"The Court: Yes, I am willing to let it be understood that an exception will be noted to every ruling of the Court, so that you won't have to ask me that question every time. Is that [1248] agreeable to you?

"Mr. Howard: Yes.

"Mr. Faulkner: Does the Government acquiesce in that statement.

"The Court: I say I am willing that the record should show that an exception has been made to every ruling made in this case on behalf of each and every defendant.

"Mr. Faulkner: That is agreeable to Counsel for the Government?

"Mr. Howland: That is agreeable to the Government.

"The Court: You will understand that there is no necessity of voicing any exception whatever."

This appellant assigns the following errors and hereby incorporates the language of the foregoing stipulation in each and every such assignment to which the said stipulation relates, as fully and specifically as if said stipulation is set out in full in each such assignment of error.

1. The Court erred in overruling the Demurrer of said appellant to the indictment in that the indictment fails to state facts constituting a public offense against said appellant.

2. The Court erred in denying the motions of said appellant to dismiss, based upon the insufficiency of the indictment to state an offense.

3. The Court abused its discretion in denying the motion and demand of said appellant for a Bill of Particulars in that the indictment is so general and uncertain as to the complicity and relations of said defendant that the particulars demanded were necessary to enable said defendant to properly prepare and present its defense.

4. The Court erred because of the insufficiency of the evidence in denying the motions of this appellant made at the conclusion of the plaintiff's case, and repeated at the close of the [1249] case.

to dismiss or for a directed verdict of acquittal, and made upon the grounds:

That there was insufficient evidence to show a violation of the Sherman Act (26 Stat. 209) by this appellant; and

That the evidence affirmatively showed that anything done by this appellant in connection with the matter set forth in the indictment were pursuant to the existence of a labor dispute to which the other labor defendants, or some of them, were parties, and any acts shown in the evidence were immunized by the Clayton Act (38 Stat. 730, Sec. 6-20) and the Norris-LaGuardia Act (47 Stat. 29); and

That plaintiff failed to prove the allegations of Paragraph 29 of the indictment referring to the lack of a labor dispute and that the unions were not carrying on legitimate objectives of labor; and

That as to this appellant there was a lack of any clear proof that it participated in, authorized or ratified any unlawful act; and

That there was no proof of an unlawful intent on the part of this appellant.

5. There is insufficient evidence to sustain the verdict and judgment and the verdict and judgment are each contrary to the evidence in that it affirmatively appears therefrom that all acts and conduct of this appellant was lawful and proper under the Clayton Act (38 Stat. 730, Sec. 6-20) and the Norris-LaGuardia Act (47 Stat. 29).

There is a fatal variance between the charge of the indictment and in particular of Paragraph 17 thereof and the proof in that no proof whatever was received or offered to substantiate this allegation in said Paragraph 17: [1250]

(The Alameda County Building and Construction Trades Council)

"is advisor to, supervisor of, and governing body for unions composed of laborers engaged in building and construction trades in the County of Alameda, California."

7. There is a fatal variance between the charge of the indictment, and in particular Paragraphs 26 to 37, inclusive, thereof, and the proof in this, in that no evidence whatever was received or offered that this appellant, Alameda County Building and Construction Trades Council, was a party, directly or indirectly, to any of the agreements offered in evidence.

8. There is a fatal variance between the charge of the indictment, and in particular Paragraphs 26 to 37, inclusive, thereof, and the proof in this, in that no evidence was received or offered showing any agreement or conspiracy whatever to which this appellant was a party, for any violation of the Sherman Act anywhere referred to in the said indictment.

9. There is a fatal variance between the charge of the indictment and the proof in this, in that all

of the acts and things testified to have been done by this appellant were lawful activities, protected by the Bill of Rights of the Constitution of the United States.

10. There is a fatal variance between the charge of the indictment and the proof in this, in that all the activities of this appellant in evidence in this case, were the lawful, peaceful, normal activities of a labor union, recognized and protected by the courts of the United States under the protective provisions of the Constitution of the United States, as in the case of like peaceful, normal and lawful activities of any other organization or group of citizens.

11. There is a fatal variance between the charge of the indictment and the proof in this, in that any activities of this appellant, tending to persuade or to subject to moral coercion, were and are lawful and in the exercise of the constitutional right of [1251] free speech, protected by the First and Fourteenth Amendments to the Constitution of the United States.

12. The Court erred in refusing to give Instruction No. 1 proposed by this appellant, as follows:

"You are instructed that the evidence in this case is insufficient to warrant a conviction of the defendant Alameda County Building and Construction Trades Council upon the charge contained in Count One in the indictment herein, and the Court therefore instructs you to render a verdict of not guilty as to the said defendant Alameda County Building and Con-

struction Trades Council upon the charge contained in said count one in said indictment.

Given

Refused Exception allowed

Given as modified, exception allowed

13. The Court erred in refusing to give Instruction No. 2 proposed by this appellant, as follows:

"I instruct you that the publication, unaccompanied by violence, of a notice that the employer is unfair to organized labor and requesting the public not to patronize him is an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress.

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

U. S. v. Hutcherson, 60 S.Ct. 463, 85 L.Ed. 422

Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L. Ed. 659

14. The Court erred in refusing to give Instruction No. 3 proposed by this appellant, as follows:

"I instruct you that under the Constitution of the United States and under the Constitution of the State of California, all citizens are guaranteed the right of free speech. I further instruct you that if you find that the defendants or some of them participated in picketing certain places of business, and that such picketing was carried on by peaceful means,

then I instruct you that such picketing was an exercise of the right of free speech by those defendants who participated in the picketing.

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

In re Lyons, 27 Cal. App. (2d) 293, 295, 299.

Thornhill v. Alabama, 60 S. Ct. 736, 310

U.S. 88, 84 L. Ed. 659 [1252]

People v. Carlson, 60 S.Ct. 746, 310 U.S. 106,

84 L. Ed. 668.

Lisse v. Local Union, 2 Cal. (2d) 312

McKay & Allied Cases, 16 Cal. (2d) 311, et seq.

15. The Court erred in refusing to give Instruction No. 4 proposed by this appellant, as follows:

"I instruct you that under the law in California picketing carried on for the purpose of seeing who can be the subject of persuasive inducement is legal. Therefore, I instruct you that if you find that the picketing in this case was conducted for the purpose of peaceful persuasion, then I instruct you that such picketing is legal.

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

Lisse v. Local Union, 2 Cal. (2d) 312.

McKay & Allied Cases, 16 Cal. (2d) 311, et seq.

16. The Court erred in refusing to give instruction No. 5 proposed by this appellant, as follows:

"Under the laws of the State of California, picketing may lawfully be carried on by any group of citizens, and so long as peaceful means are used in connection with the picketing, such picketing is a mere exercise of the right of free speech which is guaranteed to every citizen by the Constitution of the United States and by the Constitution of the State of California.

Given

Refused - Exception allowed

Given as modified, exception allowed

Authorities:

In re Lyons, 27 Cal. App. (2d) 293, 295, 299

People v. Carlson, 60 S.Ct. 746, 310 U.S. 106,
84 L. Ed. 668

Thornhill v. Alabama, 60 S.Ct. 736, 310 U.S.
88, 84 L. Ed. 659

Lisse v. Local Union, 2 Cal. (2d) 312

McKay & Allied Cases, 16 Cal. (2d) 311, et
seq."

17. The Court erred in refusing to give Instruction No. 6 proposed by this appellant, as follows:

"I instruct you that under the laws of California, picketing is lawful if carried on by peaceable and persuasive means. If you find that the picketing in this case was carried on for the purpose of actually interfering with the peaceable entrance to a place of business,

or peaceable exit therefrom, then such picketing was unlawful, but if you find that such picketing was carried on for the purpose of influencing or persuading members of the public by peaceful [1253] means, then I instruct you that such picketing was lawful.

Given

Refused. Exception allowed

Given as modified, exception allowed

Authorities:

Lisse v. Local Union, 2 Cal. (2d) 312, 321

McKay & Allied Cases, 16 Cal. (2d) 311, et seq."

18. The Court erred in refusing to give Instruction No. 7 proposed by this appellant, as follows:

"I instruct you that these defendants had a legal right, under the laws of the State of California, to withdraw social and business intercourse with any person or persons, and that they also had the right by all legitimate means, that is to say, by fair publication and fair oral or written persuasion to induce others interested in or sympathetic with their cause to withdraw their social intercourse and business patronage from any such person or persons."

Given

Refused. Exception allowed

Given as modified, exception allowed

Authorities:

Pierce v. Stablemen's Union, 156 Cal. 70

Parkinson v. Building Trades Council, 154

Cal. 581

Senn v. Tile Layers Union, 57 S. Ct. 857,
201 U. S. 468, 81 L. Ed. 1229

19. The Court erred in refusing to give Instruction No. 8 proposed by this appellant, as follows:

"You have heard the witnesses and the attorneys in this case refer to a boycott carried on by the defendants or some of them against certain places of business. The Supreme Court of California has defined a boycott as being an organized effort to persuade or coerce, which may be legal or illegal according to the means employed. In other words, and as applied to the facts in this case, the defendants had a legal right to conduct an organized boycott of certain places of business, and in pursuance of the boycott, to endeavor to persuade the public not to patronize the places of business under boycott, provided no illegal means were used in the carrying out of the boycott. Therefore, I instruct you that if you find that the defendants did carry on an organized boycott of such places of business, but that in doing so, they neither committed nor threatened any act of violence, then I instruct you that the boycott was legal.

Given

Refused Exception allowed

Given as modified, exception allowed [1254]

Authorities:

Liss v. Local Union, 2 Cal. (2d) 312, 321

Pierce v. Stablemen's Union, 156 Cal. 70, 75, 76

McKay & Allied Cases, 16 Cal. (2d) 311, et seq."

20. The Court erred in refusing to give Instruction No. 9 proposed by this appellant, as follows:

"I instruct you that if you find that the acts committed by the defendants, as shown by the evidence, were in themselves legal, and not wrong, I advise you that those acts are not rendered illegal merely by reason of any bad motive or bad or malicious intent with which such acts were done."

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

"Parkinson v. Building Trades Council, 154 Cal. 581, 593-597."

21. The Court erred in refusing to give Instruction No. 10 proposed by this appellant, as follows:

"The proof required to show ratification by defendant Alameda County Building & Construction Trades Council after actual knowledge of unlawful acts of its individual officers, members or agents, is proof of formal action taken by vote or resolution of the members comprising said Alameda County Building & Construction Trades Council."

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

Federal Anti-Injunction Act (Norris-La-Guardia Act) 29 U. S. Code, Section 106"

22. The Court erred in refusing to give Instruction No. 11 proposed by this appellant, as follows:

"The proof required to show actual participation by defendant Alameda County Building & Construction Trades Council in unlawful acts of its individual officers, members or agents is proof of formal action taken by vote or resolution of the members comprising said Alameda County Building & Construction Trades Council.

Authorities:

Federal Anti-Injunction Act (Norris-La-Guardia Act) 29 U. S. Code, Section 106"

23. The Court erred in refusing to give Instruction No. 12 proposed by this appellant, as follows: [1255]

"The proof required to show actual authorization by defendant Alameda Building & Construction Trades Council of unlawful acts of its individual officers, members or agents is proof of formal action taken by vote or resolution of the members comprising said Alameda Building & Construction Trades Council.

Authorities:

Federal Anti-Injunction Act (Norris-La-Guardia Act) 29 U. S. Code, Section 106."

24. The Court erred in refusing to give Instruction No. 13 proposed by this appellant, as follows:

"Defendant Alameda County Building & Construction Trades Council shall not be held responsible or liable for the unlawful acts of individual officers, members or agents, except upon clear proof of actual proof of actual participation in or actual authorization of such acts or of ratifications of such acts after actual knowledge thereof.

Authorities:

Federal Anti-Injunction Act (Norris-La-Guardia Act) 29 U. S. Code, Section 106."

25. The Court erred in requiring the production of the private books, papers, records and documents of this appellant, Alameda County Building & Construction Trades Council, by means of subpoena duces tecum directed to this appellant, which is a voluntary unincorporated association, to wit, a labor union, and the Court further erred in receiving such private books, papers, records and documents in evidence over the objection urged by this appellant that they were such private books, papers, records and documents of appellant association, and of each individual member of appellant association, defendants herein; that the requirement of such production and admission in evidence of such private books, papers, records and documents violated the Fourth Amendment to the Con-

stitution of the United States in that it constituted an unlawful search and seizure and also violated the Fifth Amendment to the Constitution of the United States in that it required said appellant association, and each individual member thereof, each and all being defendants therein, to give testimony against itself and himself; that such books, papers, records and documents consisted of the Constitution, By-Laws, reports, Minute Books and general correspondence. [1256]

26. The Court erred in each of the matters set out in the following numbered assignments of error filed herein by defendants and appellants, The Bay Counties District Council of Carpenters and others: This appellant, Alameda County Building & Construction Trades Council, hereby adopts and incorporates herein the said numbered assignments of the said appellants, The Bay Counties District Council of Carpenters and others, together with all grounds therein stated, as fully as if the same were repeated and copied fully herein. The following are the numbered assignments referred to: 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 36, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 (including all of the exceptions to the refusal to give the instructions numbered in said assignment No. 57), 73, 74, 75, 76, 77, 110, 115, 116 and 117.

27. The Court erred in denying the motion of this defendant and appellant for a new trial.

28. The Court erred in denying the motion of this defendant and appellant in arrest of judgment.

Dated: this 12th day of June, 1942.

CLARENCE E. TODD

Attorney for Appellant Alameda County Building and Construction Trades Council

Receipt of Copy of Within Assignment of Errors Is Hereby Admitted This 13th Day of June, 1942.

WALLACE HOWLAND

Special Asst. to the Atty. Gen.

[Endorsed]: Filed Jun. 13, 1942. [1257]

[Title of District Court and Cause.]

ORDER STAYING EXECUTION OF JUDGMENT AND SENTENCES OF CERTAIN DEFENDANTS PENDING APPEAL UPON PAYMENT OF AMOUNT OF FINES TO CLERK IN ESCROW.

Upon application of the attorneys for the following named defendants, and good cause appearing therefor,

It Is Hereby Ordered that execution of the judgment of conviction and sentences against the defendants The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 12, The United Brotherhood of Carpenters and Join-

ers of America, Millmen's Union No. 550, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Join-
 [1258] ers of America, The United Brotherhood of Carpenters and Joiners, of America, J. F. Cambiano, Charles Helbing, C. H. Irish, W. F. Kelly, Walter O'Leary, Emil Ovenberg, Dave Ryan, Charles Roe and W. L. Wilcox, and each of them, be and the same is hereby stayed pending appeal and until the final determination of the appeals taken by said defendants and until the judgment and sentences have become final; such stay being granted on the terms and condition that there is required to be deposited with the Clerk of the Court in escrow for and in behalf of each of said appealing defendants the amount of the fine such defendant is sentenced to pay, such deposit in escrow to be made under and subject to the provisions of Rule V. of the Rules of Procedure in Criminal Cases, and the stay of execution to be immediately effective upon the making of such deposit.

Dated: December 30th, 1941.

A. F. ST. SURE

Judge of the U. S. District Court.

[Endorsed]: Filed Dec. 30, 1941. [1259]

[Title of District Court and Cause.]

ORDER GIVING DIRECTIONS FOR PREPARATION OF RECORD ON APPEAL AND FIXING TIME FOR SETTLEMENT AND FILING OF BILL OF EXCEPTIONS AND FILING OF ASSIGNMENT OF ERRORS.

The attorneys for the appellants and for the United States of America, having appeared before the undersigned Judge of the above entitled court on Saturday, January 3, 1942 at the hour of 10:00 a.m., in accordance with rule VII of the Rules [1260] of Procedure in Criminal Cases, and good cause appearing therefor, the following orders and directions are made and given with respect to the preparation of the record on appeal of the defendants and appellants who stood trial in the case, namely, The United Brotherhood of Carpenters and Joiners of America, The Alameda County Building and Construction Trades Council, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil H. Ovenberg, Dave Ryan, W. L. Wilcox, Charles Roe, J. G. Ennies, John Mullen, Joseph L. Emanuel, Mullen Manufacturing Co., L. & E. Emanuel, Inc., Braas & Kuhn Co., Fink &

Schindler Co., Commercial Fixture & Store Front
Institute and Mangrum, Holbrook & Elkus:

1. It Is Ordered that the time within which said appellants hereinbefore named shall procure to be settled and filed with the clerk of the above entitled court a bill of exceptions setting forth the proceedings upon which said appellants wish to rely is hereby fixed and extended to and including May 25, 1942, and within the same time, to wit, on or before May 25, 1942, said appellants shall file with the clerk of the above entitled court an assignment of the errors of which they complain.

2. It Is Further Ordered that the proceedings upon which said appellants wish to rely shall be set forth in a single bill of exceptions.

3. It Is Further Ordered that the term of court for all purposes of the case and the appeals herein is extended to and including June 15, 1942.

4. It Is Further Ordered that the court expressly reserves jurisdiction to further extend such term of court and re- [1261] tains all other jurisdiction existing under the law to make such further orders and give such additional instructions as may become appropriate in relation to the prosecution of the appeal and preparation of the record on appeal.

Dated: January 3, 1942.

(Signed) A. F. ST. SURE

Judge of the United States District Court.

Approved as to form and consent is hereby given
to extension of term of court.

TOM C. CLARK
WALLACE HOWLAND

Attorneys for United States
of America.

HUGH K. McKEVITT
CLARENCE E. TODD

Attorneys for union defendants.

CHARLES ALBERT DAVIS
MELBERT B. ADAMS
HAROLD C. FAULKNER

Attorneys for employer defendants.

[Endorsed]: Filed Jan. 8, 1942. [1962]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of
the United States District Court for the Northern
District of California, held at the Court Room
thereof, in the City and County of San Francisco,
on Saturday the 10th day of January, in the year
of our Lord one thousand nine hundred and forty-
two.

Present: The Honorable A. F. St. Sure, District
Judge.

[Title of Cause.]

No. 26977.

This case came on regularly this day for the fixing of cost and supersedeas bonds, etc. Wallace Howland, Esq., Special Assistant to the Attorney General, was present for and on behalf of the United States. J. M. Thomas, Esq., and Moses Lasky, Esq., appeared as Attorneys for the following defendants, who had heretofore entered pleas of "Nolo Contendere", and who are now appealing herein. Ordered that these defendants give a cost bond for costs on appeal in the sum of \$250.00. Further ordered that the following named defendants give a supersedeas bond on appeal in the sum of \$2,000.00 each, to-wit: -

Lumber Products Association, Inc., Acme Manufacturing Co., Inc., Eureka Sash, Door & Moulding Mills, Boorman [1263] Lumber Company, Hogan Lumber Company, Loop Lumber & Mill Company, Smith Lumber Company, Tilden Lumber Company, E. K. Wood Lumber Company, Zenith Mill & Lumber Co., Eureka Mill & Lumber Co., Wood Products, Inc.

Ordered that the following named defendants give a supersedeas bond on appeal in the sum of \$1,000.00 each, to-wit:

Carl Warden, Harry W. Gaëtjen, Charles Monson, Fred Spencer, W. P. Holmes, Charles Gustafson, Christian A. Wilder, J. A. Hart, D. N. Edwards, Nels E. Nelson, Robert W. Shannon, Andrew Nelson: [1264]

[Title of District Court and Cause.]

ORDER STAYING EXECUTION OF JUDG-
MENT AND SENTENCE OF CERTAIN
DEFENDANT PENDING APPEAL UPON
PAYMENT OF THE AMOUNT OF THE
FINE TO CLERK IN ESCROW.

Upon application of the attorney for the follow-
ing named defendant, and good cause appearing
therefor, it is hereby

Ordered: That execution of the judgment of con-
viction and sentence against the defendant Alameda
County Building and Construction Trades Council
be and the same is hereby stayed pending appeal
and upon the final termination of appeal taken by
said defendant and until the judgment and sentence
have become final, such stay being granted on the
terms and condition that there is required to be de-
posited with the clerk of the court in escrow for and
in behalf of said appealing defendant the amount
of the fine such defendant is sentenced to pay such
deposit in escrow to be made under and [1265]
pursuant to the provisions of Rule 5 of the Rules
of Proceedings in Criminal Cases, and the stay of
execution to be immediately effective upon the mak-
ing of such deposit.

1628 *Lumber Products Assn., Inc.; et al.*

Dated; Jan. 12, 1942.

A. F. ST. SURE

Judge of said Court

Approved as to form,

FRED S. GILBERT, JR.

Special Attorney

[Endorsed]: Filed Jan. 12, 1942. [1266]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PLEAS IN ABATEMENT

The defendants Dave Ryan, Walter O'Leary and Charles Helbing before the trial on the merits each filed a plea in abatement on the ground that the evidence upon which the indictment was found by the Grand Jury was obtained in violation of the constitutional right of the defendant not to be compelled to be a witness against himself in a criminal action; and, further, that by reason of being compelled to testify concerning the transactions, matters, and things upon which the indictment was found, they were entitled to immunity from prosecution on the charges contained in the indictment. 15 USCA, Section 32.

The Government filed a demurrer to the pleas in abatement. The demurrer was sustained on the

grounds (1) that the first point is not tenable in view of the immunity [1267] statute (15 USCA §32); and (2) that the pleas failed to show by averments of fact that, were it not for the immunity statute, the defendants could have invoked their constitutional right against self-incrimination.

The plea in abatement of defendant Dave Ryan sets forth the particularities upon which the plea is based, as follows:

"That he was interrogated and testified before said grand jury concerning the organization of the United Brotherhood of Carpenters and Joiners of America and all local unions chartered under said Brotherhood, how such organizations were established, set up and functioned; that he was further interrogated and testified concerning the identity of the officers of the Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; that he was further interrogated and testified concerning his signature appended to the agreement of September, 1936, and described in the indictment herein; that he was further interrogated and testified concerning the existence of communications relating to the matters and things specified in said subpoena duces tecum."

The particularities relied upon by defendant Walter O'Leary are:

"That he was interrogated and testified be-

fore said grand jury concerning the sending back to Los Angeles of certain ironing boards shipped from Los Angeles to the San Francisco Bay area and relative to the reasons for the return of said ironing boards; that this defendant was further interrogated and gave testimony concerning activities in the San Francisco Bay area in keeping out millwork manufactured under a lesser wage scale than that existing in the San Francisco Bay area; that this defendant was further interrogated and testified concerning the refusal to use or install products not bearing the union label and he was further interrogated and testified concerning his present attitude as to the propriety of keeping out of the San Francisco Bay area products without the union label or manufactured under a lesser wage scale than that prevailing in the San Francisco Bay area."

The basis of defendant Charles Helbing's plea in abatement is set forth as: [1268]

"That he was interrogated and testified before said grand jury relative to certain statements attributed to him in the minutes of a meeting during the year 1938, of said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, and was questioned and testified concerning the meaning of such statements and the use of the word 'pledge' in connection with the agreement or

agreements between such union and the defendant manufacturers in the above entitled proceeding and referred to in said indictment;

"That this defendant was further interrogated and gave testimony concerning the taking of certain so-called 'bees or cards' to Jones Brothers, which cards fostered the use of local millwork as opposed to millwork manufactured outside of the San Francisco Bay area;

"That this defendant was further interrogated and testified concerning his acts and conduct in connection with blocking the use of material in the San Francisco Bay area that did not carry a union label, and he was further required to give evidence concerning the union organization of millwork manufacturers in the states of Washington and Oregon."

At the conclusion of the Government's case at the trial, the said defendants orally moved for a reconsideration of the original pleas. At this time the defendants conceded that they were not entitled to a disclosure of the testimony of said defendants given before the Grand Jury (*U. S. v. Goldman*, 28 F. (2d) 424, 431; *Mulloney v. U. S.* (C. C. A. 1) 79 F. (2d) 566, 574; *U. S. v. American Medical Association*, 26 F. Supp. 429, 430), but requested that the Court read such testimony. Defendants cited the case of *Edwards v. U. S.*, 312 U. S. 473, but the Court, having in mind the confidential character of proceedings before a Grand

Jury and the requirement of secrecy which guards its proceedings (*Goodman v. U. S.*, 108 F. (2d) 516, 519), reserved its ruling on the motions. After the defendants were found guilty by verdict of the jury, the said defendants again moved orally for a reconsideration of their pleas.

Pursuant to said oral motions, the Court read [1269] the transcript of the testimony of the said defendants given before the Grand Jury. The pleas in abatement were thereupon considered by the Court on their merits in the light of the testimony given by the moving defendants before the Grand Jury. The question for the Court's determination was whether such testimony, in view of all the circumstances of the case, was of such a nature as to bring the moving defendants within the purview of the immunity statute. *Miller v. U. S.* (C. C. A. 9) 95 F. (2d) 492; *U. S. v. Herron*, 28 F. (2d) 122.

The indictment alleges that certain employer groups and individuals and certain labor organizations and individuals unlawfully combined and conspired to restrain interstate trade and commerce in millwork and patterned lumber, in violation of Section 1 of the Sherman Antitrust Act. A number of contracts were offered in evidence, both by the Government and by the defendants. Those dated 1936 and 1938 had a clause providing in effect that no millwork or patterned lumber would be purchased and no work would be done on millwork and patterned lumber which was made at a wage

scale lower than that prevailing under the contract. The contracts had a clause providing that nothing in the contracts should be interpreted as violating the Sherman Antitrust Law or any other Federal statute. The defendants adduced testimony to the effect that the contracts were not intended to and did not effect any restraint of interstate commerce. The Government, on the other hand, introduced evidence of overt acts by and admissions of the alleged conspirators which established an unlawful restraint [1270] to the satisfaction of the jury.

Upon consideration of the Grand Jury transcript of the testimony of the defendants Dave Ryan, Walter O'Leary and Charles Helbing, the Court makes the following Findings of Fact:

AS TO DEFENDANT DAVID H. RYAN:

I.

Defendant Ryan appeared before the Grand Jury in response to a subpoena duces tecum served upon him calling for the production of certain documents and records of the Bay Counties District Council of Carpenters, an unincorporated voluntary association.

II.

Defendant Ryan asserted his constitutional right against being compelled in a criminal action to be a witness against himself, and elected to stand on said constitutional right unless the Government granted him immunity from prosecution for or on

account of any transaction, matter, or thing concerning which he should testify or produce evidence; and said defendant further asserted that the documents and records of the Bay Counties District Council of Carpenters called for by the subpoena duces tecum were not subject to subpoena under the constitutional guaranty against unreasonable search and seizure.

III.

The Grand Jury presented said defendant Ryan to this Court as contumacious; and said defendant thereupon, [1271] through his counsel, moved that the subpoena duces tecum theretofore served on him be quashed, vacated, and suppressed; and upon hearing had, this Court denied said motions and ordered said defendant Ryan to produce the records and documents of the Bay Counties District Council of Carpenters ~~as~~ called for in subpoena duces tecum.

IV.

Defendant Ryan appeared before the Grand Jury and produced certain records and documents of the Bay Counties District Council of Carpenters, pursuant to subpoena duces tecum and the order of the Court.

V.

Defendant Ryan again asserted his constitutional right against being compelled in a criminal action to be a witness against himself and further asserted the constitutional right of the Bay Counties Dis-

trict Council of Carpenters against unreasonable search and seizure; and the Government refused to grant said defendant immunity by virtue of any testimony he should give or with regard to the records and documents he should produce pursuant to subpoena duces tecum.

VI.

Defendant Ryan in his testimony identified through his signature thereon a certain document as a contract covering wages, hours, and working conditions, signed by the United Brotherhood of Carpenters and Joiners of America, Locals Nos. 42 and 550, and the Bay Counties District Council of Carpenters by David H. Ryan, Secretary-Treasurer, dated September 21, 1936; said defendant further [1272] testified that he was Secretary-Treasurer of the Bay Counties District Council of Carpenters; that it is customary for the Bay Counties District Council of Carpenters to approve all contracts of affiliated unions and for that reason the Bay Counties District Council of Carpenters appears as a signatory thereto; that the contract was submitted to the general office of the United Brotherhood of Carpenters and Joiners of America. Said defendant read paragraph 16 of said contract aloud and volunteered the statement that it was quite familiar to him.

VII.

Defendant Ryan identified through his signature thereon a contract dated August 10, 1939 entered

into between the Lumber Products Association, Inc., and the United Brotherhood of Carpenters and Joiners of America, Locals Nos. 42 and 550, and the Bay Counties District Council of Carpenters. He further testified that said contract was the result of arbitration; that it was never approved by the general office of the United Brotherhood of Carpenters and Joiners of America; that President Hutcheson of said United Brotherhood came to San Francisco in connection with this said contract.

VIII.

Defendant Ryan was read paragraphs 17 and 18 of an agreement of wages, hours, and working conditions, dated December 19, 1938, which had been produced before the Grand Jury by another witness, between the cabinet manufacturers, the planing mill owners, and the affiliated unions of the United Brotherhood of Carpenters and Joiners of America, which said paragraphs read: [1273].

XVII. In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto. The purchase, working and sales of the following products is excepted"—then follows a list.

"XVIII. The purchase and sale of the following products is excepted"—then follows a list.

Q "Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws;"

Defendant Ryan testified that the above paragraphs were written at the suggestion of General President Hutcheson.

IX.

Defendant Ryan testified that the signature of "J. F. Cambiano—Witness" appeared on the 1939 contract for the reason that the employers refused to negotiate unless a representative of the general office of the United Brotherhood of Carpenters and Joiners of America was present.

AS TO DEFENDANT WALTER C. O'LEARY

X.

Defendant Walter C. O'Leary appeared before the Grand Jury in response to a subpoena duces tecum served upon him calling for the production of certain documents and records of the United Brotherhood of Carpenters and Joiners of America,

Local No. 550, an incorporated voluntary association; [1274].

XI.

Defendant O'Leary asserted his constitutional right against being compelled in a criminal action to be a witness against himself and elected to stand on said constitutional right unless granted immunity from prosecution for or on account of any transaction, matter, or thing concerning which he should testify or produce evidence; and the Government refused to grant said defendant O'Leary such immunity. Said defendant O'Leary refused to answer certain questions then asked of him before the Grand Jury.

XII.

Defendant O'Leary, through his counsel, moved that the subpoena duces tecum theretofore served on him be quashed, vacated, and suppressed; and upon hearing had, this Court denied said motions and ordered said defendant O'Leary to appear before the Grand Jury and to produce the documents named in the subpoena.

XIII.

Defendant O'Leary appeared before the Grand Jury and produced certain records and documents of the United Brotherhood of Carpenters and Joiners of America, Local No. 550, pursuant to subpoena duces tecum and order of the Court.

XIV.

Said defendant O'Leary testified that he was

business representative of the United Brotherhood of Carpenters and Joiners of America, Local 550. [1275]

XV:

Defendant O'Leary identified the minute book of the United Brotherhood of Carpenters and Joiners of America, Local 550, which had been produced by said defendant; said defendant further testified from a notation in said minute book that a Mr. Edwards who sought permission to address a union meeting was connected with Wood Products, Inc.; that there was no discussion in the Union at that time or with Mr. Edwards regarding the so-called restrictive clause in the contract; said defendant further testified as follows concerning the membership and functions of certain committees referred to in said minutes; Conference Committee is composed of a representative of each local union and formulates the general policy of the unions with reference to demands as to hours and wages; the Negotiating Committee is composed of members representing the unions and the employers and negotiates agreements with reference to wages and hours; the Observers Committee was appointed from Local 550 for the purpose of checking up on material being delivered during period of strike in 1938; the State Mill Committee is an unofficial body composed of as many delegates as can be induced to attend for the purpose of promoting uniform conditions over the State. Defendant O'Leary

further testified, that the Label-League was used to promote the use of the union label; that the Building Trades meeting referred to a meeting of the Building Trades Council which was composed of representatives from all the building trades local unions; and that the so-called stabilization agreement was an effort over a two-year period to stabilize wages, hours, and working conditions in the six counties involved; that General President Hutcheson appeared during [1276] a Conference Committee meeting, shook hands, "had a little blah-blah there, and that is about all that amounted to"; that the Unions desired a uniform agreement in the counties of Marin, San Francisco, Santa Clara, Alameda, San Mateo, and Contra Costa.

XVI.

Defendant O'Leary testified concerning a reference in the minutes to a local hardware store handling non-union ironing boards manufactured and shipped from Los Angeles to San Francisco, stating that a local manufacturer wished some special concession to meet the competition for Los Angeles, which was not granted.

XVII.

Defendant O'Leary testified that the term "hot millwork" referred to millwork which did not bear a union label; that General President Hutcheson of the United Brotherhood of Carpenters and Joiners of America informed the local union that millwork bearing the union label had to be installed

even if manufactured at a lower wage scale than that paid in San Francisco, regardless of the fact that the local union objected; that said label was so honored and no pickets were placed on such labelled material.

XVIII.

Defendant O'Leary testified that during the course of the negotiations with the employer organizations during 1939 there was no discussion with regard to the so-called restrictive clause. [1277]

AS TO DEFENDANT CHARLES HELBING

XIX.

Defendant Charles Helbing appeared before the Grand Jury in response to a subpoena duces-tecum served upon him calling for the production of certain documents and records of the United Brotherhood of Carpenters and Joiners of America, Local No. 42, an unincorporated voluntary association.

XX.

Defendant Helbing testified that he was business representative of the United Brotherhood of Carpenters and Joiners of America, Local 42. Said defendant identified the September, 1939 contract through his signature thereon, and testified that it was an agreement covering wages and hours with the shops and mills; said defendant identified the signatories to the said agreement, and testified that it is customary for wage contracts to come before the local, then the District Council of Carpenters,

and then the General Office; he further testified that J. F. Cambiano is a representative of the General Office of the United Brotherhood of Carpenters and Joiners of America. Said defendant Helbing identified the journal of Local No. 42 and testified concerning an entry therein on a matter of a refund from the State Mill Committee. Said defendant Helbing then asserted a constitutional right against being compelled in a criminal action to be a witness against himself, unless granted immunity from prosecution for or on account of any transaction, matter, or thing concerning which he should testify or produce evidence; and the Government refused to grant said defendant Helbing such [1278] immunity; and said defendant Helbing refused to testify any further.

XXI.

Defendant Helbing, through his counsel, moved that the subpoena duces tecum theretofore served on said defendant be quashed, vacated, and suppressed, and upon hearing had, this Court denied said motions and ordered said defendant Helbing to appear before the Grand Jury and to produce the documents named in the subpoena.

XXII.

Defendant Helbing appeared before the Grand Jury and testified that the minutes of the Building Trades Council were sent to Local No. 42 for its concurrence; that by unfair material was "meant only non-union material"; that Local No. 42 from

time to time recommended to the Building Trades Council that firms not employing union men and working under union conditions be placed on the unfair list, and that when the men join the union the employer be removed from the unfair list. Defendant Helbing, in response to a question concerning the Jones Hardwood Company, testified that he had told Mr. Jones "when you have doors coming in here, why, we will take it up"; and further testified that during the negotiations in 1937, he was not in San Francisco and took no part in any negotiations; and that he was not a member of the Conference or Negotiating Committees in 1938.

XXIII.

Defendant Charles Helbing testified that the State Mill Committee had for its purpose the promotion of interests of the union organization. Said defendant further testified that the unions set a scale to try to meet [279] the competition from the north; that no pickets were used to enforce the union label demand or desire of the unions; that no material that had a union label upon it was kept out of the local area in 1939.

XXIV.

Defendant Helbing, upon being shown a notation in said minutes referring to a "pledge to mill owners to enforce stamp," testified that the word "pledge" was not "put down correctly" as he merely stated that action should be taken to secure

the support of the carpenters to look for stamped material; in this connection said defendant further testified, "We don't make no pledge; our agreement shows no pledge of any kind. * * * It means that we wanted stamped material used in this locality; that is what it means."

The Supreme Court in *Heike v. U.S.*, 227 U.S. 131, established the general principles governing the application of the immunity statute. "But the obvious purpose of the statute is to make evidence available and compulsory that otherwise could not be got. We see no reason for supposing that the act offered a gratuity to crime." *Ibid.* p. 142. * * * "When the statute speaks of testimony concerning a matter, it means concerning it in a substantial way, just as the constitutional protection is confined to real danger and does not extend to remote possibilities out of the ordinary course of law." *Ibid.* p. 144.

In considering the analogous problem of what testimony is under the protection of the Fifth Amendment to the Constitution, Mr. Justice Taft said in *Ex Parte [1280] Irvine*, 74 Fed. 954, 960: * * * "The true rule is that it is for the judge before whom the question arises to decide whether an answer to the question put may reasonably have a tendency to criminate the witness, or to furnish proof of a link in the chain of evidence necessary to convict him of a crime. It is impossible to conceive of a question which might not elicit a fact useful as a link in proving some supposable crime

against a witness. The mere statement of his name or of his place of residence might identify him as a felon, but it is not enough that the answer to the question may furnish evidence out of the witness' mouth of a fact which, upon some imaginary hypothesis, would be the one link wanting in the chain of proof against him of a crime. It must appear to the court, from the character of the question, and the other facts adduced in the case, that there is some tangible and substantial probability that the answer of the witness may help to convict him of a crime. * * * See also *Mason v. United States*, 244 U.S. 362.

From the Findings of Fact, therefore, it must be determined whether the testimony of each defendant had a direct tendency to incriminate or, on the other hand, whether such testimony had no more than a remote or speculative possibility of incrimination. *Heike v. U.S.*, supra; *Mason v. U.S.*, supra; *O'Connell v. U.S.* (C.C.A. 2) 40 F. (2d) 201, 204.

The defendant Ryan produced papers of the Bay Counties District Council, an unincorporated labor association, and identified the same. The defendant O'Leary likewise produced documents of an unincorporated labor association, the United Brotherhood of Carpenters and Joiners [1281] of America, Local No. 550. O'Leary also identified the records produced. Similarly, defendant Helbing produced and identified documents of Local No. 42 of the United Brotherhood of Carpenters and Joiners of

America. The production of the papers of an unincorporated association is not violative of the constitutional prohibition against unreasonable search and seizure. In re Local Union No. 550, United Brotherhood of Carpenters and Joiners of America, 33 F. Supp. 544, and cases therein cited. Testimony identifying the documents and auxiliary to the production of them is as unprivileged as are the documents themselves. *United States v. Austin-Bagley Corp.* (C.C.A. 2) 31 F. (2d) 229; *United States v. Illinois Alcohol Co.*, (C.C.A. 2) 45 F. (2d) 145, 149, cert. den. 282 U.S. 901; *United States v. Greater N. Y. Live Poultry Chamber of Commerce*, 34 F. (2d) 967, cert. den. 283 U.S. 837.

Each of the said defendants testified that he was an officer of his respective labor union. It cannot be said that the respective organizations to which the defendants belong were unlawful or that the holding of offices in such organizations was in any way contrary to law. *United States v. Greater N. Y. Live Poultry Chamber of Commerce*, supra.

The said defendants testified as to the general set-up of the affiliated union organizations and the procedure for the approval of contracts concerning wages, hours and working conditions. Officers of the organizations and signatories to the wage contracts were identified by the defendants in their testimony. It is, of course, clear that the moving defendants herein cannot successfully urge that their testimony incriminated a third person, assuming that such testimony would incriminate, which fact does not appear in this case. [1282]

The remaining testimony of the said defendants before the Grand Jury related to legitimate activities of a labor union. All of this testimony concerned that which is sanctioned by law, and was, therefore, in no way incriminating. *United States v. Hutcheson*, 312 U. S. 219.

An analogous situation to the one presented by the pleas in abatement is found in the cases arising from similar pleas filed by various defendants in the antitrust prosecution by the United States against the Greater New York Live Poultry Chamber of Commerce. In *United States v. Greater New York L. P. Chamber of Commerce*, 33 F. (2d) 1005, a plea in abatement was filed by a defendant "on the ground that he had previously, in obedience to a subpoena duces tecum, testified before the Grand Jury under oath regarding his place of residence, business affairs of the slaughter-house for live poultry which he was operating, and his connection and identification with defendant Greater New York Live Poultry Chamber of Commerce, and respecting the books, records, and papers relating to his business and respecting the business of said corporate defendant." The demurrer to the plea was sustained.

A plea in abatement was filed by another defendant in the same prosecution. A trial before a jury was had. The defendant testified that he had appeared before the Grand Jury and was asked and answered questions concerning his connection with the local union, his methods of keeping books, the

significance of certain figures and check marks in the book which he had produced, the conduct of the [1283] union meetings, and the minutes of the association. The Government's motion for a directed verdict at the conclusion of the trial was granted. The Court held that there was not a scintilla of evidence tending to show that the defendant was guilty of the crime charged in the indictment or of any other crime. *United States v. Greater New York L. P. Chamber of Commerce*, 34 F. (2d) 967.

It follows, therefore, as a conclusion of law that the testimony of the defendants Dave Ryan, Walter O'Leary and Charles Helbing given by them before the Grand Jury did not tend to and did not incriminate them, and did not tend to prove them guilty of the crime of which they were convicted by verdict of the jury. The pleas in abatement should be and they are denied on the merits.

Dated: January 14, 1942.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed Jan. 14, 1942. [1284]

United States Circuit Court of Appeals
For the Ninth Circuit

At a Stated Term, to wit: The October Term 1941, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room

thereof, in the City and County of San Francisco,
in the State of California, on Monday the eight-
teenth day of May, in the year of our Lord one
thousand nine hundred and forty-two.

Present: Honorable Francis A. Garrecht,

Circuit Judge, Presiding,

Honorable William Denman,

Circuit Judge,

Honorable William Healy,

Circuit Judge.

D. C. 23977

No. 10,011

LUMBER PRODUCTS ASSOCIATION, INC.,

et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME FOR FILING
ASSIGNMENTS OF ERROR, AND FOR
SETTLEMENT OF BILL OF EXCEP-
TIONS.

Upon consideration of the application of the ap-
pellants, The United Brotherhood of Carpenters
and Joiners of America, et al., and counsel for ap-
pellee stipulating thereto,

It Is Ordered that the time within which appel-
lants may lodge their bill of exceptions and file
their assignments of error be, and hereby is en-

larged and extended until ten days from and after the disposition by this Court of the motion heretofore made and submitted by appellants Dave Ryan, et al., for directions to the trial court relating to the preparation of the record on appeal, etc.; that appellee shall have ten days after such lodging of the bill of exceptions and filing of the assignments of error to propose any amendments thereto, and that the bill of exceptions ~~may~~ be settled and filed within ten days thereafter.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled case.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 18th day of May, 1942.

(Seal)

PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed May 18, 1942. [1285]

At a Stated Term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday the fourth day of June, in the year of our Lord one thousand nine hundred and forty-two.

Present: Honorable Francis A. Garrecht,
Circuit Judge, Presiding,
Honorable William Denman,
Circuit Judge,
Honorable William Healy,
Circuit Judge.

No. 26977-S

No. 10,011

DAVE RYAN, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA.

Appellee.

ORDER GRANTING MOTION FOR DIRECTIONS TO TRIAL COURT RELATING TO PREPARATION OF RECORD.

Upon consideration of the motion of appellants, filed March 24, 1942; for directions to the trial court relating to the preparation of the record on appeal and for an order vacating or modifying an order of the trial court in relation to the preparation of such record and of the points and authorities in opposition thereto filed by appellee on March 30, 1942, and by direction of the Court,

It Is Ordered that said motion be, and hereby is granted.

(Reverse Side of Document)

CLERK'S CERTIFICATE

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause:

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San [1286] Francisco, in the State of California, this 9th day of June, 1942.

PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed Jun. 8, 1942. [1287]

[Title of Court and Cause.] :

PRAECIPE ON BEHALF OF LUMBER PRODUCTS ASSOCIATION, INC., A CORPORATION ~~ACME~~ MANUFACTURING CO., INC., A CORPORATION, EUREKA SASH, DOOR & MOULDING MILLS, A CORPORATION, CARL WARDEN, HARRY W. GAETJEN, CHARLES MONSON, FRED SPENCER, W. P. HOLMES, J. A. HART, CHARLES GUSTAFSON AND CHRISTIAN A. WILDER.

To the Clerk of the above entitled court:

Please prepare transcript on appeal in this cause and include therein the following:

1. The indictment, excluding therefrom Count Two, that count having been dismissed.
2. Minutes of July 15, 1940, pertaining to the arraignment.
3. Demurrer filed on October 1, 1940 entitled "Demurrer of the Defendants Lumber Products Association, Inc., and Other Defendants, to the In-

dictment", excluding therefrom paragraphs VII, VIII, XI, XII, XV and XVI (said paragraphs relating to Count Two of the indictment, which has been dismissed).

4. Demurrer filed on November 27, 1940 entitled "Demurrer of Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder, Charles Gustafson and Carl Warden to the Indictment", excluding therefrom paragraphs IV, V, VIII, IX, XII and XIII (said paragraphs relating to Count Two of the Indictment, which has been dismissed).

5. Minutes of November 1, 1941, showing pleas of nois contendere entered by Lumber Products Association, Inc., a corporation, Acme Manufacturing Co., Inc., a corporation, Eureka Sash, Door & Moulding Mills, a corporation, Carl Warden, Harry W. Gaetjen, Charles Monson, Fred Spencer, W. P. Holmes, J. A. Hart, Charles Gustafson and Christian A. Wilder to Count One of the Indictment.

6. Minutes of December 20, 1941 showing dismissal of Count Two of the indictment as against the parties named in paragraph 5 above. [1288]

7. Minutes of December 20, 1941 showing the sentences imposed on the parties named in paragraph 5 above.

7a. Judgments as to parties named in paragraph 5 above.

8. Notice of appeal filed on December 24, 1941, by the parties named in paragraph 5 above.

9. Minutes of January 10, 1942 fixing cost bond

on appeal of the parties named in paragraph 5 above.

10. Statement of docket entries.

11. Assignment of errors filed herein by the parties named in paragraph 5 above.

12. Bill of exceptions on behalf of Christian A. Wilder and Charles Gustafson.

13. This praecipe.

Dated: February 20, 1942.

JAMES M. THOMAS

MAURICE E. HARRISON

MOSES LASKY

BROBECK, PHLEGER & HARRISON

Attorneys for Appellants

Named Above.

(Admission of Service)

[Endorsed]: Filed Feb. 20, 1942. [1289]

[Title of Court and Cause.]

PRAECIPE ON BEHALF OF D. N. EDWARDS,
NELS E. NELSON, ROBERT W. SHANNON,
AND ANDREW NELSON, APPELLANTS.

To the Clerk of the above entitled Court:

Please prepare transcript on appeal in this cause and include therein the following:

1. The indictment, excluding therefrom Count Two, that count having been dismissed.

2. Minutes of arraignment of the above named appellants.

3. Minutes of November 1, 1941, showing pleas of nolo contendere entered by the above named appellants to Count One of the indictment.

4. Minutes of December 22, 1941, showing dismissal of Count Two of the indictment against the parties named hereinabove as appellants.

5. Minutes of December 22, 1941, showing the sentences imposed on the parties named hereinabove as appellants.

6. Judgments as to the parties named hereinabove as appellants.

7. Notice of Appeal filed on December 26, 1941 by the parties named hereinabove as appellants.

8. Minutes of January 10, 1942, fixing cost bond on appeal.

9. Assignment of errors filed herein by the parties named hereinabove as appellants.

10. This praecipe.

Dated: February 23, 1942.

MORGAN J. DOYLE

Attorney for Appellants
abovenamed.

(Admission of Service)

[Endorsed]: Filed Feb. 23, 1942. [1290]

[Title of Court and Cause.]

PRAECIPE ON BEHALF OF BOORMAN LUMBER COMPANY, HOGAN LUMBER COMPANY, LOOP LUMBER & MILL COMPANY, SMITH LUMBER COMPANY, A CORPORATION, TILDEN LUMBER COMPANY, A CORPORATION, E. K. WOOD LUMBER COMPANY, A CORPORATION, ZENITH MILL & LUMBER COMPANY, A CORPORATION, EUREKA MILL & LUMBER CO., A CORPORATION, AND WOOD PRODUCTS, INC., A CORPORATION, APPELLANTS.

To the Clerk of the above entitled Court:

Please prepare transcript on appeal in this cause and include therein the following:

1. The indictment, excluding therefrom Count Two, that count having been dismissed.

2. Minutes of arraignment of the above named appellants.

3. Minutes of Nov. 1 & 6, 1941 showing pleas of nolo contendere entered by the above named appellants to Count One of the Indictment.

4. Minutes of November 10, 1941, showing dismissal of Count Two of the indictment against the parties named hereinabove as appellants.

5. Minutes of December 20, 1941, showing the sentences imposed on the parties named hereinabove as appellants.

6. Judgments as to the parties named hereinabove as appellants.

7. Notice of appeal filed on December 26, 1941 by the parties named hereinabove as appellants.

8. Minutes of January 10, 1942, fixing cost bond on appeal.

9. Assignment of errors filed herein by the parties named hereinabove as appellants.

10. This praecipe.

Dated: February 23, 1942.

MORGAN J. DOYLE

Attorney for Appellants above
named.

(Admission of Service)

[Endorsed]: Filed Feb. 23, 1942. [1291]

[Title of District Court and Cause.]

PRAECIPE IN BEHALF OF UNION
DEFENDANTS

To the Clerk of the Above Entitled Court:

The defendants The United Brotherhood of Carpenters and Joiners of America; The Alameda County Building and Construction Trades Council; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550; The Bay Counties District Council of Carpenters of the

The United Brotherhood of Carpenters and Joiners of America; J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil Ovenberg, Charles Roe, Dave Ryan and W. L. Wilcox, [1292] hereby request that you please prepare, certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit a transcript of the record on appeal in this cause and include therein the following:

Docket
Entry
Number

1. Indictment filed June 26, 1940.
152. Demurrer of defendants The United Brotherhood of Carpenters and Joiners of America, et al., filed October 1, 1940.
164. Plea in Abatement of defendant Dave Ryan, filed October 1, 1940.
165. Plea in Abatement of defendant Charles Helbing, filed October 1, 1940.
166. Plea in Abatement of defendant Walter O'Leary, filed October 1, 1940.
168. Plea in Abatement of The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, et al., filed October 1, 1940.

Order placing various Pleas in Abatement on secret file made October 1, 1940.

Docket
Entry
Number

174. United States Demurrer to Plea in Abatement of defendant Walter O'Leary, filed October 14, 1940.
175. United States Demurrer to Plea in Abatement entitled "Pleas in Abatement by Certain Defendants", filed October 14, 1940. [1293]
176. United States Demurrer to Plea in Abatement of defendant Charles Helbing, filed October 14, 1940.
177. United States Demurrer to Plea in Abatement of defendant Dave Ryan, filed October 14, 1940.
231. Order Sustaining United States Demurrers to Pleas in Abatement and Denying Pleas in Abatement, denying demands and motions for Bill of Particulars and overruling demurrers, filed November 22, 1940.

Plea of Not Guilty of defendant J. F. Cambiano, made November 30, 1940.

Pleas of Not Guilty of Alameda County Building and Construction Trades Council; The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; The United Brotherhood of Carpenters and Joiners of America; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42; The United Brotherhood of

Docket
Entry
Number

Carpenters and Joiners of America, Millmen's Union No. 550; Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil H. Ovenberg, Charles Roe, Dave Ryan and W. L. Wilcox, made December 2, 1940.

530. Jury's Verdict as to these defendants, filed December 12, 1941.

Order Denying Motions for New Trial and Motions in Arrest of Judgment of these defendants, made December 20, 1941. [1294]

Judgments as to these defendants, made and filed on or about December 20, 1941.

546. Notice of Appeal of defendant The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, et al., filed December 26, 1941.

548. Notice of Appeal of the defendant The United Brotherhood of Carpenters and Joiners of America, filed December 26, 1941.

550. Notice of Appeal of the defendant Alameda County Building and Construction Trades Council, filed December 26, 1941.

553. Order Staying Execution of Judgment and Sentences upon payment of amount of fines to Clerk in escrow, filed December 30, 1941.

557. Order giving directions for preparation of record on appeal and fixing time to settle and

Docket
Entry-
Number

file Bill of Exceptions and file Assignment of Errors, filed January 8, 1942.

559. Order Staying Execution of Judgment and Sentence of Alameda County Building and Construction Trades Council pending appeal, filed January 12, 1942.

560. Findings of Fact and Conclusions of Law on Pleas in Abatement, filed January 14, 1942.

577. Certified copy of Order of United States Circuit Court of Appeals for the Ninth Circuit extending time [1295] for filing Assignments of Errors and settlement of Bill of Exceptions.

579. Certified Copy of Order of United States Circuit Court of Appeals for the Ninth Circuit granting motion for directions to trial court relating to the preparation of the record on appeal, etc.

Bill of Exceptions of the Union Appellants.
581. Assignment of Errors of the defendants The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, et al.

582. Assignment of Errors of defendant United Brotherhood of Carpenters and Joiners of America.

583. Assignment of Errors of defendant Alameda

County Building and Construction Trades
Council.

This Praecept.

JOSEPH O. CARSON,
JOSEPH O. CARSON, II,
HARRY N. RÖUTZOHN,
CHARLES H. TUTTLE,
THOMAS E. KERWIN,
CLARENCE E. TODD,
HUGH K. McKEVITT,
JACK M. HOWARD,

Attorneys for Union Defen-
dants and Appellants.

Receipt of a copy of the within Praecept is
herby admitted this 23rd Day of June, 1942.

WALLACE HOWLAND,

Attorneys for United States of
America.

[Endorsed]: Filed Jun. 24, 942. [1296]

District Court of the United States
Northern District of California

**CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL**

I, Walter B. Maling, Clerk of the District Court
of the United States, for the Northern District of
California, do hereby certify that the foregoing
pages, numbered from 1 to 1296, inclusive, contain

a full, true and correct transcript of the records and proceedings in the case entitled United States of America, vs. Lumber Products Association Inc., et al. No. 26977-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Forty-two 15/100 (\$42.15) Dollars, and that the said amount has been paid to me by the Attorneys for the appellants herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 30th day of July A. D. 1942.

[Seal] WALTER B. MALING,

Clerk.

HARRY L. FOUTS,

Deputy Clerk. [1297]

[Endorsed]: No. 10011. United States Circuit Court of Appeals for the Ninth Circuit. Lumber Products Association, Inc., a corporation, et al., Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California. Southern Division.

Filed July 30, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10,011

LUMBER PRODUCTS ASSOCIATION, INC.,
et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STIPULATION AND ORDER RELATIVE TO
EXHIBITS AND THE RECORD ON
APPEAL.

Whereas, by stipulation and order made and entered in the cause in the District Court, and contained in the Bill of Exceptions, it is provided that the original exhibits admitted in evidence in the case or marked for identification and offered in evidence and rejected should be forwarded by the Clerk of said District Court to the above entitled court to accompany the transcript of record on appeal; and

Whereas, pursuant to such stipulation and order said original exhibits have been transmitted to and received by the Clerk of the above entitled court, together with the said transcript of record on appeal; and

Whereas, by said stipulation and order it is provided that so much of said exhibits as shall not by reason of their nature or length be set forth in the

Bill of Exceptions shall by reference be incorporated in and made a part of said Bill of Exceptions, and that the Findings of Fact and Conclusions of Law on Pleas and Abatement, filed January 14, 1942, be transmitted as a part of the Clerk's record under Rule VIII. of the Rules and Procedure in criminal cases and by reference incorporated in and made a part of the Bill of Exceptions;

Now Therefore, It Is Hereby Stipulated by and between the Appellee and the Union Appellants, acting through their undersigned attorneys, that the above entitled Court make and enter an order approving said stipulation and order made and entered in the District Court, and that said original exhibits be made a part of the record on appeal, provided that such of said exhibits, or pertinent portions thereof, as are necessary for the consideration of any point intended to be relied upon the appeal, and which are printable, shall be set forth at the appropriate place in the printed transcript where offered or introduced in evidence, and the party desiring the same shall so designate such exhibits for printing.

Dated this 30th day of July, 1942.

THURMAN ARNOLD;
FRANK J. HENNESSY;
WALLACE HOWLAND;
PIERCE W. BRADLEY;

Attorneys for United States
of America, Appellee.

JOSEPH O. CARSON,
CHARLES H. TUTTLE,
THOMAS E. KERWIN,
CLARENCE E. FODD,
JOSEPH O. CARSON, II.,
HARRY N. ROUTZOHN,
HUGH K. McKEVITT,
JACK M. HOWARD,

Attorneys for Union Appellants.

It Is So Ordered.

Dated July 30, 1942.

FRANCIS A. GARRECHT,

Judge of the United States
Circuit Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed Jul. 30, 1942.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION BY UNION APPELLANTS
OF POINTS ON APPEAL AND RECORD
FOR PRINTING

To the Clerk of the Above Entitled Court and to
the Attorneys for Appellee:

Please Take Notice that the Union appellants,
represented by the undersigned attorneys, adopt as
their points on appeal their respective Assignments
of Error appearing in the transcript of the record;

and designate the entire transcript for printing, and in addition the following:

1. Stipulation and Order of the above entitled Court relative to exhibits and the transcript on appeal.

2. This Designation of points on appeal and record for printing.

3. Plaintiff's Exhibit 115-30 for identification to be inserted following line 20, page 555 of the Bill of Exceptions ending with the sentence "The objection is sustained."

4. Defendants' Exhibit V for identification to be inserted following line 11, page 556 of the Bill of Exceptions ending with the portion of word "tification".

5. Defendants' Exhibit W for identification to be inserted following line 21, page 556 of the Bill of Exceptions ending with the word "Identification".

6. Defendants' Exhibit X for identification to be inserted following line 29, page 556 of the Bill of Exceptions ending with the portion of word "tification".

7. Defendants' Exhibit 2-M for identification to be inserted following line 13, page 681 of the Bill of Exceptions ending with the words "for identification".

8. Defendants' Exhibit 2-N for identification to be inserted following line 5, page 683 of the Bill of Exceptions ending with the sentence "Objection sustained".

1668 *Lumber Products Assn., Inc., et al.*

9. Defendants' Exhibit 2-O for identification to be inserted following line 27, page 683 of the Bill of Exceptions ending with the sentence "Objection sustained".

10. Defendant's Exhibit 2-P for identification to be inserted following line 1, page 685 of the Bill of Exceptions ending with the sentence "Yes, your Honor".

Dated: July 30th, 1942.

JOSEPH O. CARSON,
CHARLES H. TUTTLE,
THOMAS E. KERWIN,
CLARENCE E. TODD,
JOSEPH O. CARSON, II.,
HARRY N. ROUTZOHN,
HUGH K. McKEVITT,
JACK M. HOWARD,

Attorneys for Union Appel-
lants.

Receipt of copy admitted this 30th day of July,
1942.

THURMAN ARNOLD,
FRANK J. HENNESSY,
WALLACE HOWLAND,
PIERCE W. BRADLEY,

Attorneys for U. S. of
America, Appellee.

[Endorsed]: Filed Jul. 30, 1942.

[Title of Circuit Court of Appeals and Cause.]

**DESIGNATION BY APPELLANTS, LUMBER
PRODUCTS ASSOCIATION, INC. AND
OTHERS, OF POINTS ON APPEAL.**

To the Clerk of the Above-Entitled Court, and to
the Attorneys for Appellee:

Please Take Notice that the appellants, Lumber
Products Association, Inc., a corporation, Acme
Manufacturing Co., Inc., a corporation, Eureka
Sash, Door and Moulding Mills, a corporation,
Carl Warden, Harry W. Gaetjen, Charles Monson,
Fred Spencer, W. P. Holmes, J. A. Hart, Charles
Gustafson, Christian A. Wilder, represented by the
undersigned attorneys, adopt as their points on ap-
peal their respective assignments of error appear-
ing in the transcript of record.

Dated: August 8, 1942.

**JAMES M. THOMAS,
MAURICE E. HARRISON,
MOSES LASKY,
BROBECK, PHLEGER &
HARRISON.**

Attorneys for Appellants
Above Named.

[Endorsed]: Filed Aug. 10, 1942.

CLERK'S COPY

Vol. V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 666

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 667

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 668

LUMBER PRODUCTS ASSOCIATION, INC., ACME MANUFACTURING
CO., INC., EUREKA SASH, DOOR & MOULDING MILLS, ET AL.,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 674

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES
COUNCIL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 675

BOORMAN LUMBER COMPANY, HOGAN LUMBER COMPANY, LOOP
LUMBER & MILL COMPANY, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

No. 10011

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

LUMBER PRODUCTS ASSOCIATION, INC., a
corporation, et al.,

Appellant,

vs.

UNITED STATES OF AMERICA, _____

Appellee.

Upon Appeals from the District Court of the United States
for the Northern District of California,
Southern Division

PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

45

vs. United States of America

1673

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, November 10, 1944.

Before: Garrecht, Denman and Healy,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeals herein argued by Mr. Charles H. Tuttle, counsel for appellant, United Brotherhood of Carpenters and Joiners of America, by Mr. Harry N. Routzohn, counsel for certain Labor Union appellants, by Mr. Moses Lasky, counsel for appellants Lumber Products Association group and by Mr. Clarence E. Todd, counsel for appellant, Alameda County Building & Construction Trades Council and by Mr. Charles S. Burdell, Special Assistant to the Attorney General of the United States, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, August 23, 1944.

Before: Garrecht, Denman and Healy,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF
JUDGMENT

By direction of the Court, Ordered that the type-written opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

OPINION

Before: Garrecht, Denman and Healy,
Circuit Judges.

Denman, Circuit Judge:

This is an appeal from a judgment of the district

court sentencing appellants for violation of Section 1 of the Sherman Anti-Trust Act,¹ on finding the several appellants guilty or acting on pleas of nolo contendere. They were among a large group indicted on two counts for combining and conspiring to violate that Act. The second count was dismissed upon motion of the government.

For convenience in describing the parties to the alleged conspiracy, one group of the present appellants will be designated as the "Union Group" and the remaining appellants as the "Manufacturer Group." The former group is composed of the United Brotherhood of Carpenters and Joiners of America, an international union affiliated with the A. F. of L., two area Trade Councils, two local unions, affiliated with the above international, and several officers and members of these associations. The latter group is composed of Trade associations, corporations and individuals.

All of the appellants were engaged in or otherwise associated with the manufacture, distribution, sale or installation of mill work and patterned lumber in the San Francisco Bay Area.

The facts alleged to constitute the charge of the indictment show that prior to 1936 at least 80% of the mill work and patterned lumber used in the San Francisco area was produced in states other than California. The principal area of production was in Washington and Oregon. The processing of lumber products in the latter two states was with the most developed equipment and on a large scale

mass basis in which, in some instances, raw timber was converted into finished lumber in a single continuous operation. This method of production was in marked contrast to the apparently more costly, small plant operations of the Bay area manufacturers, in which the skilled labor of craftsmen was used. The labor used in the Washington and Oregon production, though organized, was on a lower wage scale than that of the Bay area mill workers at the time the alleged conspiracy was formed, though it does not appear that the annual wage of the out-of-state labor was lower or their cost of living as high.

The Manufacturer Group involved here produced substantially all the mill work and patterned lumber made in the area. All of the craftsmen skilled in the production or installation of these products had to be members of a local of the Union Group before they could work for the Manufacturers. It was alleged that under these circumstances the combined power of these two groups was great. It is apparent that such monopoly power well could impose a greatly increased cost to the smaller home builder and others in the great building activity of such a state as California, with its extraordinary immigration of the past two decades.

It was further alleged that in 1936 the Union Group demanded an increase in wages. This demand was acceded to by the Manufacturer Group in exchange for an agreement by the unions to prevent the sale and shipment to the Bay area of prod-

ucts manufactured outside of California. This agreement was reduced to a written contract between the parties in which they agreed that "... no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or other distributors, that do not conform to the rates of wage and working conditions of this agreement." This exclusionary clause was alleged to be subject to *certained* named exceptions.

The Manufacturer Group circulated among the trade price lists and market reports which effected artificial and nonecompetitive prices for mill work and patterned lumber. These were enforced by the Union Group by picketing, work stoppages and other means, preventing the use of materials purchased in violation of the terms of the contract.

On the basis of the alleged facts and conduct it was finally charged that the object and effect of the combination was to stop the sale of mill work and patterned lumber by manufacturers in other states in the San Francisco area and to prevent lumber yards and jobbers in that area from purchasing such out-of-state products and thereby permit the raising and fixing of prices in such products. It was further charged that the conspiracy had succeeded in its object and that prices of mill work and patterned lumber had been arbitrarily and unreasonably increased.

All of the defendants demurred to the indictment. This was overruled by the trial court. Thereafter

all the parties here making up the Manufacturers Group withdrew their pleas of not guilty and entered pleas of nolo contendere.² The parties falling in the Union Group maintained their plea of not guilty, were tried and found guilty by verdict of a jury.

The first issue common to all of the appellants is the sufficiency of the indictment. It is contended that the trial court erred in refusing to sustain the demurrers which were based on the ground that the allegations of the indictment failed to state a crime under the Sherman Act in that the agreement between the parties merely embodied legitimate objectives of labor, successfully obtained through the process of collective bargaining in termination of a labor dispute. Appellants urge here that the doctrines of the Supreme Court decisions in *Apex Hosiery v. Leader*, 310 U. S. 469, and *United States v. Hatcheson*, 312 U. S. 219, are controlling.

Appellants argue that nothing unlawful is charged for it is well established that labor may lawfully refuse to work on any product it sees fit and from this freedom it follows that labor may make the intention of such a refusal the terms of a contract.

The government argues that the allegations of the indictment cannot be so narrowly construed. They must be viewed in the light of all the facts charged, and, though such a provision in a contract may not be invalid on its face, the factual context in which it will work, its alleged purpose and ultimate effect cannot be ignored in determining its actual validity.

²Cf. *Edwards v. United States*, 312 U. S. 473.

Considering all these factors the government contends that the agreement was for the express purpose of committing the offense of violating the Sherman Act; that the gains in wages to the labor conspirators and in the profits to the co-conspiring manufacturers from their monopoly grip on the home builder and other consumers of such lumber products in the San Francisco area were not mere fortuitous and incidental results of the agreement; and that Congress in enacting the Norris LaGuardia Act did not intend that labor should be free so purposefully to conspire with its employers to exact a tribute from the consumers of their products.

We agree with the government that the charges of the indictment and the factual allegations made in their support are not of a restraint upon commerce merely incident to the ordinary disruption of the production of an employer, arising out of a protracted labor dispute and necessary to the achieving of a legitimate objective of organized labor. Rather there is here alleged a combination for a direct restraint upon commerce with an objective of destroying the competition of that commerce and permitting the fixing and maintenance of the local area prices at an arbitrary, artificial and non-competitive level. It is such intended restraints for such an objective at which the sanctions of the Sherman Act are directed.³

Nor are the appellants aided by the statement in the Apex case that the restrictive effect upon the

³See 28 Cal. L. Rev. (1940) 747, 759.

power of an employer to compete in commerce by the elimination of price competition based on differences in labor standards, resulting from the successful consummation of a wage agreement by a union, is not within the Sherman Act. Not only was the price competition of mill work and patterned lumber products of Washington and Oregon attributed in part to more efficient, technically improved, large scale methods, but here the elimination of competition was not a result merely incidentally flowing from the achieved objective of increased wages but the means of obtaining it. Also there is not here the "protection or preservation of a previously existing interest lending reasonableness to a restraint, but rather the bold pursuit of restraint for the direct mutual advantage of the parties, to be gained by the monopoly price tribute from the consumer.

Because organized labor may lawfully strike, picket or boycott in support of its demands for higher wages, which an employer may or may not be able to pay, it does not follow that labor and the employer may agree to use these weapons to destroy the competition of interstate commerce and give the employer a monopoly price raising contract and thereafter "split the take." Such conduct is not within the scope of the immunity described in the Apex case.

Likewise the monopoly purposes and objective of the agreement between the labor unions and the manufacturers distinguishes the conduct charged here from that held under the provisions of the

Norris LaGuardia Act to be immune from prosecution in *United States v. Hutcheson*, *supra*. In that case the dispute was between two unions and the effect on interstate commerce was an incident to and not the objective of the defendants' conduct. That case clearly indicates that, as shown in the *Apex* case, there is an area of conduct of combined labor and capital violative of the Sherman Act which is not immunized from prosecution under the Norris LaGuardia Act. This appears in the statement of Mr. Justice Frankfurter's opinion, page 242, that "So long as a union acts in its self interest and does not combine with non-labor groups,³ [footnote 4 below] the licit and the illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

In *United States v. Brims*, 272 U. S. 549, so cited in the *Hutcheson* case, the Supreme Court held violative of the Sherman Act a conspiracy of manufacturers of mill work, building contractors, and union carpenters to check competition from non-union made mill work coming from other states, to accomplish which the manufacturers and contractors were to employ only union carpenters, who would refuse to install the non-union mill work. This combination of labor "with non-labor groups"

³Cf. *United States v. Brims*, 272 U. S. 549, involving a conspiracy of mill work manufacturers, building contractors and union carpenters.

so held to violate the Sherman Act even lacked the element here charged of the enforcement of the employers' artificial and non-competitive price list, circulated to the trade and forced upon the consumer by the picketing and work-stoppages of the unions. There the conspirators, the Supreme Court states, (page 552) "wished to eliminate the competition of Wisconsin and other nonunion mills which were paying lower wages and consequently could undersell them. Obviously, it would tend to bring about the desired result if a general combination could be secured under which the manufacturers and contractors would employ only union carpenters with the understanding that the latter would refuse to install nonunion-made millwork. And we think there is evidence reasonably tending to show that such a combination was brought about, and that, as intended by all the parties, the so-called outside competition was cut down and thereby interstate commerce directly and materially impeded. The local manufacturers, relieved from the competition that came through interstate commerce, increased their output and profits; they gave special discounts to local contractors, more union carpenters secured employment in Chicago and their wages were increased. These were the incentives which brought about the combination. The nonunion mills, outside the city found their Chicago market greatly circumscribed or destroyed; the price of building was increased; and, as usual under such circumstances, the public paid excessive prices."

In the four cases⁵ succeeding *United States v. Hutcheson*, in which the Supreme Court sustained, without opinion, the dismissals of the indictments, there is a charge of a purpose to restrain interstate commerce, but in no one of them does it appear that the labor dispute is ended and emerging from it are monopolies, previously purposed and intended, in which both labor and employer successfully divide the gain from the price raising of the combination. In three of them the combination is between labor groups alone. In one, *United States v. Carozzo*, 313 U. S. 539, the Supreme Court sustained the district court (37 F. Supp. 191, 193) which had dismissed the indictment in which it was charged that the combined labor unions "by means of strikes and threats of strikes . . . force paving contractors in the Chicago area to enter into working agreements with the defendant Council requiring paving contractors using truck mixers in the Chicago area to employ the same number of men which they would employ if truck mixers were not used; . . ."

Here is no allegation of a combination of unions and employers to restrain interstate commerce such as is referred to in the opinion in the *Hutcheson* case. If there be an impediment to the interstate commerce in truck mixers of concrete by so forcing the employers to the extra expense of mixing con-

⁵*United States v. Building & Construction Trades Council*, 313 U. S. 539; *United States v. Carozzo*, 313 U. S. 539; *United States v. International Hod Carriers, etc. Council*, 313 U. S. 539; *United States v. American Federation of Musicians* (47 E. Supp. 304), 318 U. S. 741.

crete by hand labor, it is, as stated in the opinion of the district court "only indirect and incidental," and as that opinion also states "In the instant case no acts were alleged to have been performed which would constitute restraint of trade in commercial competition in the marketing of truck mixers." 37 F. Supp. 196. Furthermore, the coercion of the employers is against the employers' interest and solely for the interest of the union members. The situation is strikingly different from one where the agreement between employers and unions for the exclusion of the articles from outside the state is purposed at once to raise prices by monopoly pricing and create an increased wage by such pricing.

Here the Manufacturer Group and the Union Group are no longer "participating in or interested in a labor dispute" as that term is used in § 5 of the Norris LaGuardia Act.⁶ The dispute is past. The labor and non-labor groups are combined. The acts described in § 4 of that Act⁷ and section 20 of the

⁶"No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this title." 29 U.S.C. § 105.

⁷"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined)

Clayton Act,⁸ some of which are charged in the indictment here to have been committed by the now non-disputant unions and their members and their manufacturing employers are not to secure any legitimate advance of the laborer's interest. They

from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this title."

29 U.S.C. § 104.

§38 Stat. 738, 29 U.S.C. § 52. "No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall

are squeezing implements to extort what, in effect, is a capital levy on the home builder and other consumers. Their lack of organization makes them helpless to defend themselves against the monopolistic conspirators.

We hold that Congress in enacting the Norris LaGuardia Act and the Clayton Act did not give immunity to the "wrongness" and the "illicit" of this character of combination of labor with non-labor groups. The district court committed no error in overruling the demurrers and in refusing to dismiss the indictment.

It is contended that the trial court erred in denying the defendants' motion for a directed verdict in that there was insufficient evidence to support the

prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

charges of the indictment. But in reviewing the record we find evidence of agreements between the two groups and conduct on the part of each directed at the elimination of competition from the northern products by the price control and other acts from which a jury well could find a concert of action and purpose to unlawfully restrain interstate commerce. Therefore, the trial court did not err in submitting the case to the jury.

Appellant United Brotherhood of Carpenters and Joiners of America does not argue here the question of the sufficiency of the evidence to support the charge that some form of agreements existed between the local labor groups and the employer group or that they may have had as their objectives the suppression of commerce. But it does raise, separately, the issue of whether there was evidence of its knowing of or being a party to the found combination or conspiracy.

There was evidence showing knowledge and participancy by the president, vice-president and field representative of the international in the negotiation of working agreements in the Bay area between the local organizations and the mill operators. There was also evidence of approval of those agreements by those officers acting in their capacity of final arbiters of problems or differences which might arise between locals. We cannot say there was nothing upon which the jury could find this appellant, through its authorized agents in pursuit of its accepted policy, was a party to the combination.

The Alameda County Building and Construction Trades Council attacks the sufficiency of the evidence as to it in the same manner. We find ample evidence of the Council aiding in the enforcement of an agreement to exclude certain types of lumber and determining whether certain dealers should be placed on the unfair list for violating the agreements from which the jury could find participation in the conspiracy. The trial court did not err in refusing an instructed verdict for this appellant.

Error is claimed by two of the defendants, Christian A. Wilder and Charles Gustafson, both of the Manufacturer Group, in the trial court's overruling of their plea to its jurisdiction and in rendering judgment and imposing sentence on them. The grounds urged are that they, as individuals, had not been indicted by a grand jury. Rather, it is contended, only the firms of which they are partners had been indicted.

Paragraph 8 of the first count of the indictment states, in part, "The following named individuals, partnerships and corporations . . . are hereby indicted and made defendants herein . . . The legal status and principal place of business or residence of the owners are listed below." There then follows a page set out in five columns. In the first of these are listed eight names of business houses. The second column lists "Legal Status," i.e., corporation, partnership, individuals. The third column lists "Names of partners or individuals," and included among the names under the heading are those of Wilder and Gustafson.

It requires no strained construction to find the obvious. Clearly those two defendants were included among the "following named individuals" who were indicted. The trial court did not err in its ruling on their pleas and motions.

Appellants of Local No. 42 and Local No. 550 of the United Brotherhood of Carpenters and Joiners assert that the trial court erred in sustaining the government's demurrer to their pleas founded on an alleged immunity said to arise out of the forced production of subpoena duces tecum of the records and documents of these unions by the grand jury. This contention has been foreclosed by the recent decision of the Supreme Court in *United States v. White*, . . . U. S. . . . decided June 12, 1944.

Like error is claimed by appellants Ryan, O'Leary and Helbing, who were officers or business agents of the Locals or Councils indicted. Pursuant to subpoenas duces tecum addressed to their organizations these men appeared before the grand jury and, under protest, produced the desired organizational records and documents. It is clear from the decision in the *White* case that these defendants could not claim a personal immunity arising out of the production of documents held in their custody in an official capacity.

However, in addition to their producing union books and papers, each was forced to testify before the grand jury. The question is then raised as to whether their testimony concerned in a substantial way their own connections with the transactions for which they were subsequently found guilty as

charged. *Heike v. United States*, 227 U.S. 131, 144. The trial court found no such substantiality and concluded they were not immune from prosecution under 15 U.S.C.A. § 32.

The transcript of their testimony given before the grand jury is included within the record now before us. *Ryan v. United States*, 128 F. 2d 552 (CCA-9). It shows that each identified the organizational records produced; that each was an officer or agent of his respective union, and that each outlined the organizational structure and relationships between the several unions. None of such testimony is within the area of immunity. *United States v. Greater New York Live Poultry C. of C.*, 34 F. 2d 967 (D.C. N.Y.), cert. denied.

The grand jury transcript further shows that Ryan identified as being his own a signature on a contract dated September 21, 1926. He was then asked, "Do you recall the circumstances under which that contract was negotiated . . . ?" and answered by describing how conference committees chosen by the parties, the unions and employers, negotiated such agreements. The next question was, "Now, in connection with the contract I have just handed you, . . . did you personally sit in at these negotiations?" to which he answered "Yes."

True, that identification by an officer of his signature on a contract entered into by his organization may not have sufficient relationship to the investigated transaction to warrant granting immunity. Cf. *United States v. Minoise Alcohol Co.* 45 F. 2d 145, 149 (CCA-2). Certainly the description of

the methods of negotiations in themselves are not within the protected area. Where an individual is required to answer whether he participated in the negotiations of a contract a clause of which is subsequently set forth in an indictment found against him charging its operation to be one of the means "of effectuating . . . [an] . . . unlawful combination and conspiracy," it cannot be said that his testimony has no substantial bearing on a transaction and its criminality founded on merely some imaginary hypothesis. *Ex parte Irvine*, 74 Fed. 954, 960; *Mason v. United States*, 244 U.S. 362, 365; *United States v. Molasky*, 118 F. 2d 128, 134 (CCA-7); *Doyle v. Hofstadter*, 257 N.Y. 244, 177 N. E. 489. Proof of this portion of the contract was treated by the government as one of the vital links in the chain of evidence summing up the existence of a conspiracy to restrain trade, cf. *United States v. Murdock*, 284 U. S. 141, 150, and acknowledgment of having participated in its negotiations would "tend" in rather a strong sense to incriminate him. *United States v. St. Pierre*, 132 F. 2d 837, 838 (CCA-2). That the contract on its face may have been lawful, *United States v. Weisman*, 111 F. 2d 260, 262 (CCA-2), or that the defendant signed it in an official capacity cannot be said to destroy his immunity as an individual in all circumstances.

As to appellant O'Leary, in addition to identifying to the grand jury union documents explaining entries in the minute books, describing the labor conditions prevailing during the period of the con-

spiracy, negotiations over wages, he was asked if he worked in a "Negotiating Committee" made up of union representatives and employer representatives which worked on a stabilization agreement. He answered in the affirmative. Further testimony before the grand jury, warranting him immunity is stated in the footnote.⁹

O'Leary was further asked: "Now, referring to the minutes of January 13, 1939, I notice that it states, 'Business Agent O'Leary reported checking over the sidings and freight sheds and mills during the week and not finding any hot mill work.' Do you recall the circumstances surrounding your activities as mentioned in this excerpt from the minutes?" Answer "Yes." Then the following questions and answers were put and given.

Q. "Would you state them to the Grand Jury?"

A. "Well, every once in a while somebody will break out with a rash over there that there is a hell of a lot of non-union mill work coming in from the North—"

Q. "That is, from Washington and Oregon?"

A. "Yes, I guess they don't come in from British Columbia, and they want to know what the hell the business agent is doing,—'How are we going to live and work here if that cheap work comes in?' And naturally enough, they want me to go out and check on it."

Q. "When you go out and check, what do you do?"

A. "Go around to all the sidings and look them over, and see if there is any cars setting on them, and see what is in them."

Q. "If you find that there is any so-called 'hot mill work' in any cars on any of these sidings, what do you do then?"

A. "Go to the employer, or the man that is purchasing them and try to get him to use local made mill work. Now, in using the words 'mill work' it

Regarding the testimony of appellant Helbing before the grand jury, information of negotiations between the unions and the employers similar in kind to that of O'Leary was given. In addition he was asked if he knew a Mr. Jones of Jones Hardwood Company. He answered, "I have spoken to the gentleman."

Q. "As a matter of fact, you called on him, didn't you and asked him to put up one of those placards that the Grand Jury has seen here?"

A. "He asked me first—he sent me a letter in reference to certain things and conditions, and I went down to see Mr. Jones."

Q. "And you asked him at that time to put up a placard didn't you?"

A. "Yes, to boost local material."

Q. "Now, do you recall some doors that were coming in for a Ferry Building job down here, from a concern in Washington?"

A. "No, I can't recall that."

Q. "You don't? Don't you recall that Mr. Jones had ordered some doors from this concern in Wisconsin and that he couldn't bring them in here?"

A. "No, he was given concessions—I didn't transact that particular part of it. There were

has to do with moldings—there was a time when all surfaced material used to bear the label, and the carpenters would not handle it unless it did. At present, why, four-side stuff can come in; we don't bother about it, but if there is moldings comes in we object to it."

two of us on the job here, part of the time last year."

Q. "Do you recall Mr. Helbing, that due to the fact that this company in Wisconsin did not have the label, that Mr. Jones obtained certain letters from them stating that they were fully organized A. F. of L. with their local union number on those letters? Do you recall that?"

A. "No, I don't. What I did tell Mr. Jones was this, when he asked me the question in reference to those doors. I said, 'When the time arrives, when you have doors coming in here, why we will take it up.'"

Among the objects of the conspiracy alleged in the indictment was the exclusion of mill work and patterned lumber manufactured in states other than California. Among the means and methods alleged was "defendants . . . by means of pickets and threats to picket, forced the Jones Hardwood Company of San Francisco to cancel an order for mill work and patterned lumber from the Roddis Lumber and Veneer Company of Marshfield, Wisconsin . . ."

At the trial the government introduced a letter addressed to Helbing's local in which the Jones Hardwood Company inquired whether there were restrictions on certain doors manufactured in Wisconsin. During the course of the government's cross-examination of Helbing he was again interrogated regarding his conversations with Jones.

Apart from O'Leary's and Helbing's participation in the negotiations between the unions and the manufacturers, it is clear that the grand jury questions bearing on their own conduct relating to the exclusion of the out-of-state products coming into the area had a very substantial relationship to the transactions found to restrain commerce and a direct tendency to incriminate them if other facts were found. To subpoena a person to appear and testify before a grand jury investigating possible unlawful restraints on interstate commerce and then force him to answer in what manner he kept articles of such commerce from being sold, certainly is to invade the area of incrimination and raise the immunity granted by 15 U.S.C.A. § 32. The trial court erred in refusing to dismiss the indictment as to these three defendants.

Those appellants who pleaded not guilty and were tried excepted to certain instructions such as the following:

"In this case the question is whether the labor union defendants entered into a combination with the non-labor defendants whereby the defendants intended to or did bring about an undue restriction of or interference with interstate commerce in mill work or patterned lumber." "If you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase patterned lumber and mill work manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, in-

cluding patterned lumber and mill work manufactured in States outside the State of California; . . . such an agreement or understanding would constitute a violation of the Sherman Act as charged in the indictment. It would constitute no defense under the law, either to the employer defendants or to the union defendants that the agreement or understanding may have been arrived at in settlement of a labor dispute; . . ."

These instructions were covered by an overall instruction based upon the rule stated in the *Hutchinson* case. It is "Labor unions or their members may join together in promoting their self-interest, even though their acts in so doing may result in an undue obstruction of interstate commerce. But they can do this only so long as they act in their self-interest and do not combine with non-labor groups." There is abundant evidence convincing to us as well as to the jury, that the unions did not confine their efforts to promoting their self-interest but combined with the employers, creating a monopoly excluding mill work from other states, for their employers' interest as well. We find no prejudicial error in the instructions.

The judgment against all the appellants, save Ryan, O'Leary, and Helbing is affirmed. As to the latter three, the judgment is reversed and as to them their immunity requires that the indictment should be dismissed.

Affirmed in part and reversed in part.

[Endorsed]: Opinion. Filed Aug. 23, 1944,
Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10011

LUMBER PRODUCTS ASSOCIATION, et al.,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

JUDGMENT

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Southern Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgments of the said District Court in this Cause against all the appellants, save Ryan, O'Leary and Helbing be, and hereby are affirmed, and as to the latter three appellants the said judgments be, and hereby are reversed, and as to them that the indictment should be dismissed.

[Endorsed]: Filed and entered Aug. 23, 1944.
Paul P. O'Brien, Clerk.

1698

Lumber Products Assn., Inc., et al,

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Saturday, October
14, 1944.

Before: Garrecht, Denman and Healy,
Circuit Judges.

[Title of Cause.]

**ORDER DENYING PETITIONS FOR
REHEARING**

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant, Alameda County Building and Construction Trades Council, filed September 21, 1944, and the petitions of appellants United Brotherhood of Carpenters and Joiners of America, Lumber Products Association Group, Boorman Lumber Company, et al., and Certain Labor Union appellants, filed September 22, 1944, and within time allowed therefor by rule of court, for a rehearing of above cause be, and each of them hereby is denied.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Mr. Hugh K. McKevitt, et al counsel for the appellants, and good cause therefor appearing, It Is Ordered that the issuance, under Rule 28; of the mandate of this Court in the above cause be, and hereby is stayed to and including November 17, 1944; and in the event the petition for a writ of certiorari to be made by the appellants herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANCIS A. GARRECHT

United States Circuit Judge

Dated: San Francisco, California, October 14, 1944.

[Endorsed]: Filed Oct. 14, 1944. Paul P. O'Brien, Clerk.

1700 *Lumber Products Assn., Inc., et al.*

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing Five volumes, consisting of one thousand six hundred ninety-nine (1699) pages, numbered from and including 1 to and including 1699, to be a full true and correct copy of the entire record, excluding certain original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 24th day of October, 1944.

[Seal]

PAUL P. O'BRIEN,

Clerk

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 666

ORDER ALLOWING CERTIORARI—Filed January 2, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 667

ORDER ALLOWING CERTIORARI—Filed January 2, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 668

ORDER ALLOWING CERTIORARI—Filed January 2, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

1702

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 674

ORDER ALLOWING CERTIORARI—Filed January 2, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 675

ORDER ALLOWING CERTIORARI—Filed January 2, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(6521)



192
7-17458
Sup. Ct.
Supreme Court of the United States

October Term, 1944. — No. 666 936 6

**UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA**

Petitioner

against

UNITED STATES OF AMERICA

Respondent

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT,
WITH BRIEF AND APPENDICES**

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IN THE
Supreme Court of the United States

October Term, 1944. — No.

UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA,
Petitioner,

against

UNITED STATES OF AMERICA,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT,
WITH BRIEF AND APPENDICES**

*To the Honorable Harlan Fiske Stone, Chief Justice of the
United States, and the Associate Justices of the
Supreme Court of the United States:*

The petition of the defendant, United Brotherhood of
Carpenters and Joiners of America, respectfully shows:

Your petitioner seeks review of the judgment of the
United States Circuit Court of Appeals for the Ninth
Circuit, dated and filed August 23, 1944 (1697), pursuant
to its opinion rendered August 23, 1944, affirming the
judgment of the United States District Court for the
North District of California, Southern Division (1366-8),

entered upon a verdict of guilty (1365) and based upon an indictment (4-37) charging this petitioner, among others, with violation of Section 1 of the Sherman Anti-Trust Act. (27).

The petitioner's application to the United States Circuit Court of Appeals for a rehearing was denied on October 14, 1944 (1698).

A copy of the Opinion of the Circuit Court of Appeals begins at page 1674 of the Record, and is reprinted as Appendix A hereto (p. 50, *post*). It is officially reported in 144 Fed. (2d) 546.

Summary and Short Statement of Matter Involved

The indictment, in the first instance, consisted of two counts; but, upon the Attorney General's motion at the outset of the trial the second count, charging a conspiracy to create a monopoly, was dismissed (111, 139).

The indictment charges that continuously since September 1, 1936, the defendants (composed of labor groups and manufacturing groups) conspired against Section 1 of the Sherman Act for the following "general purpose" and "object" (26-28):

1. To exclude manufacturers of millwork and patterned lumber located in states other than California from selling this material in, and from shipping it into, the San Francisco Bay Area.

2. To prevent lumber yards and jobbers in the Area from purchasing and bringing into the Area millwork and patterned lumber manufactured in states other than California.

3. To raise, fix, stabilize and maintain prices for millwork and patterned lumber shipped into California for sale in the Area.

On October 1, 1940, this petitioner and the other labor defendants demurred for insufficiency (42).

The demurrer was overruled on December 2, 1940 (103). Exception was taken (104) and constitutes an Assignment of Error (1592-3).

During the trial, this petitioner made the following motions:

1. A motion at the opening of the trial to dismiss the indictment for insufficiency (140).

2. A motion at the close of the prosecution's case to dismiss the indictment or for directed verdict, for insufficiency of evidence (596-7).

3. A like motion at the close of the whole case (1124-5).

4. Motions after verdict for a new trial and in arrest of judgment (1209, 1213, 1217).

These motions were all denied. Exceptions were taken and Assignments of Error filed (141, 598, 1125, 1221, 1393-5, 1606).

The affirmance by the Circuit Court of Appeals was unanimous.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, 28 U. S. C. A., Section 347 (a) and as affected by Rule 11 of the Criminal Appeals Rules.

Statutes Involved

The Statute alleged to have been violated is Section 1 of the Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, as amended by the Act of August 17, 1937, 50 Stat. 693, 15 U. S. C. A., Section 1. There are also involved the Clayton Act, 15 U. S. C. 17 and 29 U. S. C. 52, and the Norris-LaGuardia Act, 29 U. S. C. 102 *et seq.*

These statutes are reproduced in the Appendix to the petition and brief being submitted by the other labor defendants.

Brief Statement of Facts

(1) The indictment *does not charge* any extortion, racketeering, corruption, disorderly conduct, violence or threat of violence.

The indictment concedes the fact of "a labor dispute." It expressly alleges that the defendant unions had made "wage scale demands" upon the defendant manufacturers (28); that the unions had backed these demands by picketing (30, 38); and that the manufacturers of millwork and patterned lumber outside the Bay Area of San Francisco "have a lower wage scale than the millwork and patterned lumber manufacturers in the San Francisco Bay Area" (8).

The indictment further alleges that the union activity was local to the Bay Area and resulted in a local wage scale agreement with the defendant manufacturers local to the Bay Area (27-32, 36). The defendant unions were also all localized in the Bay Area with the exception of this petitioner which, in the indictment, is joined on the principle of imputation, to wit: "as advisor to, supervisor of, and governing body for carpenters' local unions and carpenters' district and state councils in the United States of America" (18).

In other words, the indictment sought to invoke the criminal law in order to equalize wages in this industry by bringing them down to the lowest existing standard, whereas the organized labor and the agreement attacked in the indictment sought to equalize wages by bringing them up to the highest existing standard.

(2) The testimony tells a consistent story of a continuous labor struggle in the Bay Area for several decades.

In 1921 the local employers had forced on the local employees an open shop, and they kept it open for fourteen years (829). Not until June 27, 1935, and after a two weeks strike, were the local unions again able to secure a closed shop agreement, but that agreement was terminable on sixty days notice by either side (754, 757). It was not signed by all the manufacturers in the Bay Area, and some non-union shops continued in operation (651, 758, 776, 831).

In consequence, in the spring of 1936 the controversy intensified itself again. An arbitration agreement was made and later revoked (605-10, 758-9, 763). On September 21, 1936, another closed shop agreement, stating a wage scale, was signed but was again terminable on sixty days notice by either side (279-287). This agreement soon broke down (834) and was followed by a new arbitration which resulted in a dispute as to the parties bound thereby (621, 772-3, 835-6). This dispute was ultimately compromised by the agreement dated October 17, 1938, which fixed a new and somewhat higher wage scale; but either side could terminate it after January 1, 1939 "upon notice" (290, 568, 620-630, 671, 773-4).

Obviously, these short term, revokable agreements were merely *truces* in a continuous labor dispute on three fronts, to wit: the front against all the employers in the Bay Area, the front against such of those employers as refused the concessions by the others, and the front

against non-union labor and non-union goods in and out of the Bay Area. The long-range view of the unions was to promote wages and unionization throughout the entire industry.

The agreement of 1936 (Ex. 132, p. 280) contained the following paragraph (283):

"16. In the interest of standardization of rates of wages and working conditions, it is agreed that no material will be purchased from, and no work will be done on any material or articles that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase of and the working of the following products is excepted: (Then follows a list of certain excepted articles.)

Nothing herein is to be interpreted as preventing the entire production and sale of any articles in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws."

A substantially similar provision, with similar exemptions and exceptions, was in the 1938 contract (Ex. 132, pp. 288-290).

This agreement does not classify articles according to geographical origin but according to wage scale and working conditions, *no matter where their origin*.

(3) At the trial the Court seemed to consider that these written contracts were *ipso facto* violations of Section 1 of the Sherman Act; and its charge to the jury was tantamount to a direction to convict.

It reduced the issue of guilt or innocence on the part of the union defendants to the single question (1153):

"The sole question is whether defendants intended to *or did* restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants."

In the same breath, the Trial Court ruled out as a qualification, excuse or defense on the part of the labor defendants any claim or proof that they were acting solely to protect their self-interest or their wage scale or working conditions, or to enforce their refusal to work on articles non-union made or not bearing the union label. The Court charged (1152):

"Though the motive of the labor union defendants was to protect their self-interest, you must find the defendants, or any, of them, who so combined and conspired, guilty as charged."

The Trial Court also charged (1152):

"In this connection, I charge you that whether the millwork and patterned lumber involved in the testimony in this case was manufactured in mills whose employees were members of the United Brotherhood of Carpenters and Joiners of America or of its affiliated unions, or whether such millwork and patterned lumber bore a union label, is not to be considered by you."

The application of these binding instructions to the written agreements of 1936 and 1938 was both obvious and absolute. Indeed, the Trial Court made the application inescapable and positive by charging (1150):

"If you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork

manufactured in states outside the State of California; such an agreement or understanding would constitute a violation of the Sherman Act as charged in the indictment."

At the same time the Trial Court refused all requests by the labor defendants for instructions on the subject of the agreements with the employer defendants, and the purposes of the labor defendants in making and acting under those agreements. (1175-82). Exceptions and Assignments of Error were entered (1128, 1155-60, 1441, 1591, 1598-9).

(4) The agreements of 1936 and 1938 were closed shop agreements, the shops of the signatory manufacturers being thereby closed against both non-union labor and non-union materials made *anywhere*.

These agreements did not bar from the shops material merely because made outside the Bay Area or the State. The only articles barred were those made under less favorable wage scales or working conditions.

Such a closed shop has never before been held to be a violation of the Sherman Act, notwithstanding that it does involve, as a consequence, some restraint or diminution of the freedom of trade and some effect upon costs and prices.

On the labor side, the very purpose of such an agreement is to protect or improve the scale of wages and hence the standard of living from the depressing competition of lower wages and lower standards of living, whether reflected in non-union services or in non-union goods. Such an agreement may well have some effect upon costs and prices in the area involved, either as making against a decline or as causing some increase. On the other hand, it may have the effect in the long run of improving wages and working conditions not only in the area involved but throughout the entire industry, and hence of increasing buying power and promoting trade everywhere. The

American idea is that the community receives its return in the greater purchasing power and cultural standards of the workmen.

But, under the law as charged by the Trial Court, such closed shop agreements are reduced to jury issues. A restraint of trade or a tendency to monopoly or an economic effect upon prices can always be claimed. Although the union may concededly be acting in its own interest and for its own ends, nevertheless under this charge to the jury any such interest or aim is outlawed by the simple argument that there was an agreement with a non-labor group and that this latter group also had in mind its own self-interest and a purpose to transmute its increased costs into increased prices. Obviously, such a view of the law converts every closed shop into a lawsuit and undermines the whole principle.

Nevertheless, the Circuit Court of Appeals has affirmed this charge to the jury and hence the conviction which inevitably ensued.

(5) As to this petitioner (United Brotherhood of Carpenters and Joiners of America), which was made a party to the indictment by imputation of guilt (18), the Trial Court merely told the jury that in determining the guilt or innocence of a labor union, the jury was to proceed by the same test as they would apply to a corporation, to wit: "an examination of the acts of their agents" (1138); and that (1137):

"The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation."

The Trial Court made no reference to the broad autonomy of local unions under the Constitution of the Brotherhood in the matter of government, laws, trade policies and rules, strikes and other union activities (461-2).

The Trial Court also refused all our requests for instructions as to the requirements for finding guilty participation by this petitioner. These requests are not mentioned in the opinion of the Circuit Court of Appeals.

In the Circuit Court of Appeals we challenged these instructions and refusals to instruct, on the following grounds:

(a) They erroneously applied to a criminal case the rule applicable in a civil case.

(b) Even in a civil case the alternative phrase was erroneous because it did not require that the act which the agent "assumed to do" must be found to fall within the scope of the "duties actually delegated to him".

(c) In a criminal case, guilt is personal and there is no such thing as guilt by mere imputation.

(d) Section 106 of the Norris-LaGuardia Act expressly exempts a labor union or organization from criminal responsibility by reason of the unlawful acts of an officer or agent "except upon clear proof of actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof."

The Questions Presented

As to this petitioner the formal questions presented are:

1. Was a violation of Section 1 of the Sherman Act lawfully charged as to it?

2. Assuming that a violation of the statute was lawfully charged, was there sufficient evidence as to this petitioner upon which to submit the case to the jury and upon which to sustain a verdict of guilty?

3. Were prejudicial errors as to this petitioner committed in the course of the trial and during the charge?

4. Was the affirmance by the Circuit Court of Appeals based on sound principle of law?

Actually, however, there are involved in these formal questions certain far-reaching issues of law as to which many Federal courts are in sharp conflict with the decisions of the courts below, and which are of such general public importance and concern as to call for settlement by this Supreme Court:

Since the decision below, the Circuit Court of Appeals for the Second Circuit has rendered an opposite decision in a case far stronger for illegality, and has acknowledged the conflict.

The decision by the Court below was made August 23, 1944. On October 12, 1944, in the case of *Allen Bradley Co., et al., v. Local Union No. 3, International Brotherhood of Electrical Workers, et al.*, the Circuit Court of Appeals for the Second Circuit (1) reversed a decree of the District Court of the United States for the Southern District of New York, which had enjoined activities of the defendant union as violative of Section 1 of the Sherman Act, and (2) dismissed the action on the merits. In doing so, the Circuit Court of Appeals rendered an opinion, a full copy of which is hereto annexed as Appendix B (p. 68, *post*).

In that opinion the Circuit Court of Appeals for the Second Circuit discussed the decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case, and closed its discussion with these words (p. 88, *post*):

"Nevertheless, with deference one may question the present extent of the *Brins* doctrine as here restated, or the view that a labor dispute loses its character as such as soon as a collective bargain is made. Compare the views of the same district judge in the *Bay Area Painters* case, *supra*."

The *Bay Area Painters* case thus referred to (to wit: *United States v. Bay Area Painters, & Dec. Joint Com.*, D. C. N. D. Cal., 49 F. Supp. 733, 738) was a decision by the same Judge who tried the present case and was rendered after the verdict in the present case.

In its opinion in this *Allen Bradley Co.* case, the Circuit Court of Appeals for the Second Circuit made note of this subsequent decision by the Trial Judge in our case, and said concerning it (p. 87, *post*):

"See also *United States v. Bay Area Painters & Dec. Joint Com.*, D. C. N. D. Cal., 49 F. Supp. 733, 738, saying 'it would seem beyond belief' that Congress, having carefully protected the machinery of collective bargaining, would then after the bargain has been made withdraw that protection and leave the parties liable for prosecution for criminal conspiracy, and distinguishing *United States v. Lumber Products Ass'n*, D. C. N. D. Cal., 42 F. Supp. 910, affirmed in part, 9 Cir., Aug. 23, 1944, — F. 2d —."

The following quotations from the opinion of the Circuit Court of Appeals for the Second Circuit in the *Allen Bradley Company* case will show how diametrically opposed it is both in principle and in application of principle to the decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case:

(p. 72, *post*):

"The findings then show that 'agreements and understandings' entered into by the three groups—manufacturers, contractors, and union—gave them a complete monopoly which they used to boycott the equipment manufactured by the plaintiffs."

While the boycott as found ran the gamut of electrical equipment from highly complicated switchboards and control devices down to novelty lamp shades, the case of the modern switchboard is offered as typical. There are in New York City a number of companies manufacturing switchboards who, before these activities of Local 3, shared an open competitive market with many of plaintiffs. In return for a closed-shop agreement calling for higher wages and shorter hours for employees, however, Local 3 promised these local companies an exclusive market for switchboards within the city, so that they could name their own prices to

offset increased production costs. Local 3 carried out its promise with the help of the electrical contractors. It had already won closed-shop agreements from a vast majority of the latter through a series of strikes, threatened strikes, and sympathetic strikes by other unions in the building trade, which threatened to tie up all construction work in New York City. It now secured the further terms that union members should work only on switchboards of local manufacture by union shops, and that the contractors should have the sole power to buy materials for any job, with a proviso as additional protection that only products bearing the union label would be utilized. Like the manufacturers, the contractors were not averse to the extra expense of union material and labor, when all competition was thus removed from the field."

(p. 74, *post*):

"All in all, the situation disclosed by the findings is that of an entire industry in a local area, quite dominated and closed to outsiders by a powerful union, whose members receive as a result exceedingly higher wages, shorter working hours, and improved working conditions, and whose co-partners—the local manufacturers and contractors—also gain by the greater profits achieved through the stifling of competition."

(p. 75, *post*):

"Moreover, as must be expected in cases where a local area is thus closed to outside products, the persons injured will include not only the excluded manufacturers and rival unions, but also—at least initially and very likely continuously—the consuming public, which must pay higher rates (as, indeed, it must also for raising of wages and lowering of hours of work) and does not receive the benefits of improved machinery or methods of operation. Thus it appears that general electrical work and equipment are costly in New York City, and instances are cited where equipment of plaintiffs was turned down for local equipment with union label at twice or three times the cost. Since the lowest bidder no longer gets

city contracts, if it be not a union bid, the city has lost federal grants, which were premised upon acceptance of the lowest bid. An outstanding example of the consequences from this type of economic warfare to third persons is that on local manufacturer which has two price lists for its products, one for union use within the city at more than twice the price of the other for use without the jurisdiction."

Judge Swan rested his dissent on an opposite interpretation of the *Brimis* decision and of its applicability to-day in view of the later Norris-LaGuardia Act.

We are informed by counsel in this *Allen Bradley* case that a petition for a writ of certiorari is expected to be filed in the next two or three weeks.

Reasons Relied on for Granting of Writ of Certiorari

1. The question of the applicability of Section 1 of the Sherman Act to the union activities of this petitioner and of the other union defendants is of great public importance, wide application, and vital concern to organized labor and the country's economy.

2. The question of the applicability of the Norris-LaGuardia Act as immunizing such activities is of like critical importance.

3. The rulings of the Trial Court, affirmed by the Circuit Court of Appeals, involve questions of law which touch the most basic rights and relations of organized labor and of employers.

4. As demonstrated above, there is fundamental conflict between the Court below and the Circuit Court of Appeals for the Second Circuit as to these questions, the principles back of them, and the application thereof to given factual situations.

5. This conflict is also reflected in decisions by other federal courts, contradictory of the decisions below. The instances will be presented hereafter.

6. Much of this conflict arises from different and contradictory interpretations of *United States v. Brims*, 272 U. S. 549, decided in November, 1926, and from different and contradictory views as to the effect upon that decision of the subsequent Norris-LaGuardia Act and of subsequent decisions by this Supreme Court.

7. Much of this conflict also arises from different and contradictory interpretations of the limitation noted by Mr. Justice Frankfurter in *United States v. Hutcheson*, 312 U. S. 219, 232, that: "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under § 20 (of the Clayton Act) are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means".

And also from the footnote which Mr. Justice Frankfurter appended thereto, to wit: "*Cf. United States v. Brims*, 272 U. S. 549, involving a conspiracy of mill work manufacturers, building contractors and union carpenters".

8. Involved in these questions is the further issue as to when and to what extent an agreement for a shop closed against non-union labor or non-union goods or both, may be licit or illicit, innocent or criminal.

9. Involved in these questions is the further issue raised by the decision of the Court below that where labor and non-labor groups have reached an agreement in settlement of a labor dispute, then "the dispute is past", and "the labor and non-labor groups are combined" and "no longer participating in or interested in a labor dis-

pute' as that term is used in § 5 of the Norris-LaGuardia Act", (p. 26, *post*).

Contrast this language and principle with (1) the fact that in this industry in the Bay Area continuous labor controversy has existed since 1921, and the agreements of 1935, 1936 and 1938 were and proved to be but short-term revocable *truces* therein, and (2) the further fact of the later declaration by the Circuit Court of Appeals in the *Allen Bradley Company* case, *supra*, that "with deference one may question . . . the view that a labor dispute loses its character as such as soon as a collective bargain is made" (p. 88, *post*).

10. Involved in these questions also is the further issue as to whether, in the event of an agreement between a labor and a non-labor group in settlement of a labor dispute, the immunity of the labor group by reason of acting in its own self-interest, is nullified by reason of the motives, objectives or subsequent acts of the non-labor group.

The Trial Court charged the jury that, in such case, "though the motive of the labor union defendants was to protect their self-interest", nevertheless that fact provided no immunity or defense (1152).

On the other hand, the Circuit Court of Appeals for the Second Circuit has just said in the *Allen Bradley Company* case, *supra*, that "the activities which cannot be forbidden to Local 3 acting by itself are not to be interdicted because other groups join with them to the same end" (p. 88, *post*). "The same end" in that case, as the opinion therein frankly acknowledged (p. 72, *post*), was that "in return for a closed-shop agreement calling for higher wages and shorter hours for employees, Local 3 promised these local companies an exclusive market for switchboards within the city, so that they could name their own prices to offset increased production costs".

11. The Trial Court also charged the jury that whether the articles involved in the testimony were non-union made or did not bear a union label, "is not to be considered by you" (1152-3).

This charge, we submit, eliminated from recognition by the jury the most basic rights of union labor (p. 39, *post*.).

12. By eliminating as relevant to a defense the whole subject of the motive or purpose of the labor defendants "to promote their self-interest" (1152), and by its refusal of all the unions' requests for instructions on this subject (p. 26, *post*), the Trial Court withdrew from the jury all consideration of whether the Union's attitude towards the articles involved in the testimony was merely because of their origin outside the state or, on the contrary, was because they were made under inferior wage scales and working conditions or were non-union made or unlabeled.

13. The Trial Court also charged the jury starkly (1153):

"The sole question is whether defendants intended to *or did* restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants."

Under this instruction, an agreement between the unions and the employers in a metropolitan locality for higher wages and a closed shop is illegal *per se*, because it is "an understanding" and hence a combination, and because it will restrict the freedom of trade and may increase prices in the locality (p. 19, *post*).

Obviously, such a view of the law jeopardizes the very life of trade unionism as "a social organism which must depend on united effort for its existence and upon at least certain restraints of trade as a reason for its being" (*Allen Bradley Company case*, p. 79, *post*).

14. The test which the Trial Court gave to the jury (1137-8) for imputing guilt to this petitioner (an international labor union with more than 350,000 members (18)) was erroneous even in a civil case (*Coronado Co. v. United Mine Workers*, 268 U. S. 259), and *à fortiori*, in a criminal case (pp. 42-9, *post*). It was also directly contrary to the test made mandatory by Section 106 of the Norris-LaGuardia Act.

This issue—the extent of the criminal liability of a national or international union for the act or acquiescence of one of its officers—is one of great public importance.

We submit that the decisions below reverse the law of this issue as heretofore established by decision and statute.

Dated: November 6th, 1944.

THE UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA,

Petitioner,

By JOSEPH O. CARSON,
CHARLES H. TUTTLE,
THOMAS E. KERWIN,
HUGH K. McKEVITT,

Of Counsel

CHARLES H. TUTTLE,
Attorney for Petitioner,
and a member of the bar of this Court,
15 Broad Street,
New York City 5, N. Y.

I hereby certify that in my judgment the foregoing petition is well founded and that it is not interposed for delay.

Dated, November 6th, 1944.

CHARLES H. TUTTLE,
Of Counsel for Petitioner.

BRIEF AND APPENDICES

POINT I.

The basic position of the Circuit Court of Appeals that the agreement settling the labor dispute "split the take" by giving "the employer a monopoly price raising contract", was not the issue submitted to the jury, rests on principles which overturn an unchallenged body of judicial authority, and begs the fundamental question.

On the other hand, the Trial Court erroneously instructed the jury that the agreement constituted a combination between a labor and a non-labor group and hence had no immunity from the Clayton Act or the Norris-LaGuardia Act; and that it constituted a criminal offense against Section 1 of the Sherman Act if it was "intended to or did restrict" interstate commerce.

The Trial Court in effect directed a verdict of guilty.

(1) The construction placed by the Circuit Court of Appeals upon Count 1 of the indictment is revealed in the following sentence of its opinion distinguishing *United States v. Hutcheson*, 312 U. S. 219. (p. 58, *post*):

"The situation [in the *Hutcheson* case] is strikingly different from one where the agreement between employers and unions for the exclusion of the articles from outside the State is purposed at once to raise prices by monopoly pricing and create an increased wage by such pricing."

The opinion of the Circuit Court of Appeals constantly refers to the agreement as one for "price control", and as giving the "employer a monopoly price raising contract", with the union and the employer agreeing to "split the take" (pp. 54, 55, 58, *post*).

But no such formulation or issue was submitted to the jury; and, moreover, the charge of attempting "monopoly" had been withdrawn at the outset of the trial by the Attorney General's act in dismissing the second count of the indictment which charged an offense against Section 2, of the Sherman Act (111, 139).

(2) The jury was at no time told that before it could convict the labor defendants it was bound to find that they "purposed at once to raise prices by monopoly pricing and create an increased wage by such pricing". On the contrary, the jury was expressly told that, although the raising of the price of millwork and patterned lumber in the Bay Area was one of the alleged "three objects" of the combination as charged in the indictment, it was not necessary, in order to convict, for them to find that price-raising was actually one of the objects, but that it would be sufficient to find any one of the other alleged "objects", to wit, restricting sales in the Bay Area by outside manufacturers or restricting purchases in the Bay Area from outside manufacturers. Said the Trial Court to the jury (p. 1140):

"It is not incumbent upon the Government to prove that all three of the stated objects were sought or attained. Proof of one is sufficient."

As a result of this charge, there is now no way of knowing whether the jury found price-raising to be one of the alleged objects, as distinct from some restraint on interstate commerce. For all that appears the jury may have found that the objective of the labor group was the maintenance of a wage scale and a closed shop, rather than price-raising.

(3) Indeed, when the Trial Court came to put to the jury the ultimate acid test of guilt or innocence on the part of the labor defendants, it did not include price-

raising as a necessary objective on their part, but, on the contrary, proceeded on the predicate that an agreement between employees and employers in settlement of a labor dispute became a combination between a labor and non-labor group and derived no immunity from the fact that the labor group may have entered into it to promote their self-interest; and that, if the effect thereof was a restraint of interstate commerce, the labor defendants were criminally guilty under Section 1 of the Sherman Act.

In effect, the Trial Court charged as matter of law that a combination existed; that any motivation of self-interest on the part of the labor group was irrelevant; and that the only question was whether, by so combining, the labor group had in fact restrained the shipment of millwork and patterned lumber in interstate commerce (1152-3).

Thus, the Trial Court charged (p. 1152):

"Labor unions or their members may join together in promoting their self-interest, even though their acts in so doing may result in an undue obstruction of interstate commerce. But they can do this only so long as they act in their self-interest and do not combine with non-labor groups."

The Trial Court also charged (1151-52):

"It would constitute no defense under the law, either to the employer defendants or to the labor union defendants, that the combination and conspiracy may have been arrived at as the result of a settlement of a labor dispute; and it would likewise constitute no defense under the law that any such combination and conspiracy may have been arrived at as the result of proceedings in arbitration of such a dispute."

All this amounted to instructing the jury that a labor group could with immunity act together in an obstruction—indeed, "an undue obstruction"—of interstate commerce, provided they were "promoting their self-interest" in so doing; but that this immunity ended when their labor

dispute ended in an agreement with the employers. From that point on, there was a combination between the labor and the non-labor groups; and hence, charged the Trial Court, the test of innocence or guilt from that point on was as follows (1153):

"The sole question is whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants."

This, we respectfully submit, amounted to a direction to convict, since the fact of an understanding between the labor and non-labor groups was established by agreements in writing, and since those agreements promoted the self-interest of the labor group by establishing shops closed against non-union labor and non-union goods, and thereby necessarily wrought some restriction upon the freedom of interstate commerce in services and goods.

(4) Hence we respectfully submit:

(a) The Circuit Court of Appeals begged the whole question by stating that it found in the evidence sufficient for a jury finding of a purpose on the part of the labor group "at once to raise prices by monopoly pricing and create an increased wage by such pricing" (p. 58, *post*).

(b) The Trial Court bound the jury to a view of the law which was different and utterly erroneous and compelled a conviction.

(5) Moreover, there was nothing at all in the agreements of 1936 and 1938 about prices or the increase thereof (280-3, 288-290).

The subject-matter of each agreement was a wage scale and working conditions, and the settlement of a labor dispute. The unions demanded that the employers exclude from their shops both non-union employees and

articles made under a less favorable wage scale and less favorable working conditions *no matter where made.*

Neither agreement stipulated for the exclusion of articles merely because made outside the Bay Area or the State of California.

The unions' immediate object was to secure and protect the ability of their own members to obtain and maintain employment at a wage scale consonant with an appropriate livelihood. Their long-view object was to raise wages throughout the entire industry *everywhere.*

To quote again Par. 16 of the agreement of September 21, 1936 (U. S. Ex. 132, pp. 282-8):

"16. In the interests of standardization of rates of wages and working conditions, it is agreed that no material will be purchased from, and no work will be done on any material or articles that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase of and the working of the following products is *excepted*:"

Not a word is said about prices or price control or the creation of a monopoly or a division of "a take". The employers were free to compete among themselves or with others, and to introduce into their shops material made anywhere in the United States provided it was made under rates of wages and working conditions as good or better than that in the agreement. Surely, as free men, the members of these unions had the right to refuse or refrain from working on materials made under conditions which they believed to be inimical to their interests or to the interests of organized labor generally in the field of carpentry; and if they had the right so to refuse or refrain, they had the right to make with employers an agreement which recognized such right to refuse or refrain and which embodied it in a settlement of the labor dispute caused by their assertion of that primary right, even

though as a consequence there was some restriction on the freedom of trade or some economic effect upon prices.

Indeed, the indictment itself recognizes that "wage scale demands" was the content of the unions' position, and alleges that the defendant manufacturers "agreed to accede and did accede" to such "wage scale demands" (par. 28, p. 28). If the unions had the right to make such wage scale demands, the manufacturers had the right to accede thereto and to agree to the consequent closed shop.

(6) Of course, every closed shop, whether closed as to non-union employees or non-union goods or both, may make more costly to the public the product of such shops and will of necessity restrain trade and competition in services or goods or both; but such is the cost which the American people expect and have decided to pay for free labor and for higher standards of living and of purchasing power on the part of the millions who labor and for the collective bargaining which preserves and advances those standards.

Under the decision of the courts below, there is, as we see it, the anomaly that labor may lawfully strike in support of wage scale demands which are lawful as demands, but if the granting of these demands will mean that the employers must seek or may get better prices for their products, then both the laborers and the employers "split the take" and the laborers become criminals.

That a closed shop—closed as to both employees and materials—is a lawful labor objective and hence a lawful employment agreement, is thoroughly well settled and is illustrated in *United States v. Carozzo* (the *Hod Carriers* case), 313 U. S. 539, affirming 37 Fed. Supp. 191, 193. See also:

Gundersheimer's, Inc. v. Bakery, etc. Union, 119 Fed. 2d 205 (U. S. Court of Appeals for District of Columbia):

United States v. B. Goedde & Co., 40 Fed. Sup. 523;

Rambusch Decorating Co. v. Brotherhood of Painters, 195 Fed. 2d. (C. C. A. 2d) 134; cert. denied 308 U. S. 587.

(7) Every agreement settling a labor dispute presupposes some "interest" on the part of the employers, quite as much as some "interest" on the part of the union, in making the agreement at all. It has never, heretofore been supposed that only agreements which leave no shred of advantage to the employers or only agreements the cost of which cannot be passed even in part to the public, are the only agreements within the law.

(8) The law as declared below provides in its logic and in its effect a potent weapon for the destruction of the whole principle and basis of the closed shop, particularly when embodied in a settlement agreement made with a group of employers.

It assures the Government, or some third party asserting injury, a ready and certain means of always claiming motive or purpose and thus of turning every such agreement into a jury issue,—and, what is much worse, a ready and certain means of claiming that the self-interest or purpose of the union is outlawed by the self-interest or purpose of the employers.

POINT II

The views of the Trial Court, that an agreement terminating a labor dispute was a combination; that labor's immunity ceased when such combination occurred; that such combination was a violation of Section 1 of the Sherman Act even though the Union's objective was to protect wages and working conditions, provided the effect was to restrict interstate commerce; and that the Clayton Act and the Norris-LaGuardia Act were not relevant to any issue before the jury, are abundantly revealed and emphasized by the Trial Court's charge and by its rejection of all requests by the labor defendants for clarifying instructions.

These refusals were error and proceeded on conceptions of law which, we submit, violated both statute and settled judicial authority.

At the conclusion of the trial, the labor defendants unsuccessfully presented in various forms a large number of requests for instructions concerning agreement with employers, which may be summarized briefly as follows:

1. Members of a union may lawfully decline to work upon or handle products made under conditions of employment deemed by them to be unfair to their union (1175).

2. In considering the agreement, a relevant issue as regards the labor defendants was whether or not they were "acting in their own self-interest to carry out legitimate objectives of labor" in the matter of wages and working conditions (1177).

3. "The elimination of price competition based on differences in labor standards" is a lawful objective of a labor union. "Since in order to render a labor combination effective it must eliminate the competition from non-union made goods" (1182). (*Apex Hosiery v. Leader*, 310 U. S. 469, 503-4.)

4. In considering the agreement, a relevant issue as regards the labor defendants was whether they had "acted in their own self-interest and to carry out their own objectives of labor such as a better wage scale and conditions of employment and more jobs for the union members" (1182).

5. The making of the agreement of September 21, 1936 was not in itself a violation of the Sherman Act (1183).

6. That agreement "was legal on its face" (1189).

7. The members of the defendant local unions had the lawful right to take the position that they "would do no work upon any material or article that has had any operation performed on same by saw mills, mills or cabinet shops or their distributors that did not conform to the rates of wage and working conditions prescribed by the agreement of September 21, 1936" (1183).

8. "If the defendant unions and their members deemed it to their interest to refuse to work on material not manufactured in conformity with the rates of wage and working conditions prescribed by the agreement of September 21, 1936, they had a legal right so to do" (1184).

9. In that event "the mere fact that such material may have been made in some state other than California does not render such refusal unlawful or in violation of the Sherman Act" (1184).

10. The agreement could not be a violation of the Sherman Act unless the jury found that it was not made by the labor defendants "to carry out the interests and labor objectives of the unions but solely with intent to conspire and combine with the employer defendants to make the unions the instrument of the employer to restrain interstate commerce to eliminate competition from millwork and patterned lumber in interstate commerce" (1186).

11. In considering the agreement a relevant issue as regards the labor defendants was whether the pro-

ecution had substantiated the allegations in the Indictment (32) that in the making thereof "the defendant unions were not attempting to enforce or protect the right to bargain collectively nor acting in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the alleged combination and conspiracy was alleged to be directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area" (1191).

12. "A case involves or grows out of a labor dispute when it involves persons engaged in the same industry, trade, craft or occupation, or who have direct or indirect interests therein and a person or association shall be held to be participating or interested in a labor dispute if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs" (1179).

13. In considering the agreement, a relevant issue as regards the labor defendants was whether it "resulted from negotiations to fix terms and conditions of employment" "and grew out of a labor dispute" (1179).

14. In considering the agreement a relevant issue as regards the labor defendants was whether they made it "in order to establish a uniform condition of labor conditions, unionize other mills in the industry, gain jobs or better wages, or for any other legitimate purpose of a labor organization" (1180).

15. "Either agreements or acts done in furtherance thereof by labor defendants for the purpose of furthering the unionization of other shops in the same industry in order to better the conditions and wages of the employees is a legitimate labor activity and does not violate the Sherman Act" (1182).

The Trial Court threw aside all these requests. Exceptions were duly taken, and Assignments of Error were duly filed (1128, 1135-69, 1441, 1591). We submit that under

the Clayton Act, the Norris-LaGuardia Acts and settled judicial authority, we were entitled to these instructions.

Especially notable is the refusal of the Trial Court to charge the requests which we have numbered 10 and 11, *supra*. The Circuit Court of Appeals has based its decision on the predicate that the jury would have been warranted by the evidence in finding the alleged facts upon which that Court justified the conviction but which the Trial Court, by refusing these requests, held to be irrelevant as essential to a conviction.

Our position is and was that even those alleged facts would not justify in law the conviction of the labor defendants under Section 1 of the Sherman Act. But, deeply concerned by the extent to which throughout the trial the Trial Court had reduced the issue to the bare elements of a combination and restraint of trade, and hence had refused our motions for a dismissal and directed verdict, we submitted these requests as a precautionary second line of defense.

POINT III

The views of the law as expressed by the courts below are directly contrary to settled judicial authority. No other such decision has been made either before or since the Norris-LaGuardia Act.

The basic hypothesis of the Trial Court is that, although a union may with immunity under the Norris-LaGuardia Act demand as working conditions a shop closed against non-union employees or non-union goods, irrespective of where they come from, nevertheless accession and agreement by employers to such demand constitute as matter of law "a combination" which forfeits the immunity under the Clayton Act and the Norris-LaGuardia Act and is condemned by the Sherman Act, if goods which might come from other states are included in or affected by such closed-shop agreement.

No decision upholding such basic hypothesis has been or can be cited.

On the contrary, there are many decisions, including decisions by this Supreme Court, holding the very opposite.

These judicial decisions have within a month been fully analysed and their effect declared by the Circuit Court of Appeals in the *Allen Bradley Company* case, and a copy of the opinion therein is hereto annexed (pp. 75 et seq., post).

Hence, we shall content ourselves with fortifying that analysis with a few observations of our own.

The Hod Carriers Case

On the authority of the *Hutcheson* case, the Supreme Court two months later affirmed in *United States v. International Hod Carriers' Union and Common Laborers' District Council*, 313 U. S. 339, the decision of the Illinois Federal Court dismissing the indictment as insufficient. In the District Court that case was reported as *United States v. Carrozzo*, 37 F. Supp. 191.

The importance of that decision in the present instance is that there *there was an agreement* between the union defendants and the employers, the effect of which was adverse to the interstate commerce of those employers and of manufacturers in other states, but the legality of which was sustained as a lawful accession by the employers to the demands and rights of the union defendants.

According to the indictment in that case, the union defendants by calling strikes and threatening to strike had forced paving contractors in the Chicago area to enter into working agreements with the defendant unions "requiring paving contractors using truck-mixers to employ the same number of men which they would employ if truck-mixers were not used" (p. 193). Also, according to the indictment, this conduct and these agreements were intended to exclude, and did exclude, mechanical truck-mixers from the Chicago area and thereby adversely affected the manu-

facturers of the truck-mixers, all of whose factories were outside of the State of Illinois.

According to the opinion of Judge SULLIVAN in that case, the indictment not only alleged the coercing of the Chicago paving contractors into such agreements, but it also alleged (p. 193):

"2. The enforcement of these working agreements between the Hod Carriers' Council and contractors by ordering member unions to strike, and by threats to strike."

"3. Preventing building contractors in the Chicago area from using truck-mixers on building projects by strikes or threats of strikes."

"4. Refusing to approve the employment of, and ordering union members not to work upon, any building or paving project where truck-mixers are used."

"5. Warning manufacturers of truck-mixers, and prospective purchasers thereof, that truck-mixers are not permitted to be sold or used in the Chicago area."

Obviously, the factual allegations of the indictment in this Chicago case, both as to the nature of the agreements with the local employers and as to the action of the local union defendants thereunder, went far beyond anything in either the present Indictment or in the evidence in the present case. There the union demanded what is called "excess employment,"—an objective altogether different from merely better wages as here. There, also, the union actually warned the manufacturers of truck-mixers (all of which were made in other states) that "the truck-mixers are not permitted to be sold or used in the Chicago area." In the present case, there was no such agreement and there was no such action, for the unions were not refusing to work on materials made outside the Bay Area merely because so made, but only on materials made at a lower scale of wages, irrespective of where they were so made.

Building & Construction Trades Council Case

An achieved agreement with employers engaged in interstate commerce was also alleged in the indictment in the above case, held insufficient on demurrer by the Supreme Court (313 U. S. 539) on the authority of the *Hutcheson* case.

There the indictment alleged:

"As a result of the wrongful and unlawful conspiracy engaged in by the defendants herein, it has become necessary for aforesaid trucking and drayage firms to hire trucks driven by individuals acceptable to defendants named herein, at an expense far in excess of compensation received by them under their said contracts with aforesaid interstate carriers."

The United Brotherhood of Carpenters Case

An achieved agreement with interstate purchasers and users of plywood was also alleged in the indictment in the above case, held insufficient on demurrer by the Supreme Court (313 U. S. 539) on the authority of the *Hutcheson* case.

There the indictment alleged:

"The said acts of the defendants (strikes and picketing) have caused purchasers and users to cease to purchase Douglas fir plywood from the Harbor Plywood Corporation in the State of Washington for direct shipment from that state to other states in the United States."

The Rambusch Case

In *Rambusch Decorating Co. v. Brotherhood of Painters*, 105 Fed. (2d) (CCA 2) 134, cert. den. 308 U. S. 587, there was a written agreement between an employer and an international labor union affecting an interstate industry. The question was whether that agreement was a violation of the Sherman Act.

The agreement provided that where a job was done by an employer in a state other than New York (where his seat of business was), he should pay whichever wage scale was the highest, and whichever set of hours was more favorable to labor—either the scale prevailing on the site of job, or the scale prevailing in New York.

The employer took a contract to paint a hotel in Roanoke, Virginia. The New York scale was \$1.50 an hour, and the Roanoke scale was 75¢ an hour. The employer found he could hire no painters in Roanoke except on condition that he comply with the Union's demand that he pay the New York scale, to wit; \$1.50 an hour. This demand doubled the employer's payroll. It eliminated his ability to compete in Roanoke with local contractors; and made it impracticable for him to bring his materials and supplies from New York to Roanoke. There is no question but that the Sherman Act covers the sale of services as well as the sale of commodities. (*U. S. v. Gold*, 115 Fed. (2d) (CCA 2) 236, 238.)

Nevertheless, the Circuit Court of Appeals for the Second Circuit unanimously reversed a determination that this agreement was violative of the Sherman Act. It said the following, which is directly applicable to the present case (138):

"Any contract designed to secure higher wages may restrain trade in one sense if it is effective, for it will hamper the weak employer who cannot afford the increase. In another sense, however, it may promote commerce by making for better and more peaceful labor relations. A contract with such a purpose is hardly to be held illegal of itself, or else all union organization goes."

The Goedde Case

Another case in which there was an agreement between the local unions and the local employers is *United States v. B. Goedde & Co.*, 40 F. Supp. 523,—a decision by Judge

LINDLEY in the Eastern District of Illinois. There motions to quash the indictment were granted. According to the indictment "contracts" had been executed between the defendant mill owners and the defendant unions, (a) providing for employment of only such persons as were members of the union, *i. e.*, a closed shop, (b) permitting the mill owners to use the American Federation of Labor Union Label, and (c) "*excluding unlabeled lumber.*" These contracts were charged to be a combination and conspiracy in violation of the Sherman Act inasmuch as they had the effect of excluding or obstructing unlabeled lumber seeking to come into the East St. Louis area from other states,—thus creating, in these respects, a duplicate of the present case.

Judge LINDLEY ruled that the Supreme Court's decision in the *Hutcheson* case required the application to such an agreement of the test of the *Norris-LaGuardia Act*. He said—in language directly applicable to the agreements in the present case (p. 532):

"In following the prescribed test, let us see which of the alleged means employed and acts of labor unions are exempted from criminal prosecution under the Clayton Act. In the analysis hereinbefore set forth the acts mentioned under 1 (a) and (b) (Paragraph 48 of the indictment), relating to contracts for closed shops and use of the label are clearly within the legitimate activities of unions as contemplated by the Clayton Act. Under 2 (a) and (b), (c) and (d) (Paragraph 49), it is alleged that the unions warned builders that they would not work with unlabeled materials; warned purchasers that such material would have to be removed and returned to the manufacturer and forced the makers of such material to remove the same from the job and return it to the plants. It would seem obvious that these acts are likewise granted immunity by the Clayton Act. Under 3 (Paragraph 50) we have alleged intimidation of builders by strikes and threats to strike, thereby forcing them to buy union-labeled material, although

similar products could be purchased at lower prices in other states. This too is exempt within the language of the Clayton Act. The resulting effect upon interstate commerce is purely incidental, *United States v. Hutcheson*, 312 U. S. 219, at page 241, 61 S. Ct. 463, 85 L. Ed. 788. Each of the acts thus far mentioned apparently is, by the Clayton Act, recognized as a legal economic weapon of labor unions."

It is true that Judge LINDLEY further stated, by way of dictum, that other charges in the indictment as to the use of violence and threats and as to the refusal to install material *merely because it was manufactured in states other than Illinois*, had no immunity under the Norris-LaGuardia Act; but those statements have no bearing on the present case, because here no violence was charged in the indictment and because the labor defendants were not charged in the indictment with refusing to work on materials coming from other states *merely because they came therefrom*. Moreover, no such issues were here presented to the jury. The sole charge here was that the labor defendants would not work on materials manufactured under less favorable rates of wage and working conditions no matter where such manufacture occurred. According to the Trial Court's charge to the jury herein an agreement *to that effect* constituted as a matter of law—and without more—a violation of the Sherman Act.

On the other hand, under the decision of Judge LINDLEY, just such a refusal by the labor defendants and just such an agreement by employers recognizing and giving effect to just such a refusal, was held to be, as regards the labor defendants, within the immunities of the Norris-LaGuardia Act.

The Gundersheimer Case

Another case involving an agreement is *Gundersheimer's Inc. v. Bakery, etc. Union*, 119 Fed. 2d, 205 (U. S. Court of Appeals for the District of Columbia).

There a bakery corporation, having its shop in the District of Columbia, brought an action under the Sherman Act for treble damages by reason of a strike called among its employees to enforce the following demands (p. 206):

"You can't buy cakes in Philadelphia, and you cannot make cakes in your own plant *unless you will agree not to buy any cakes out of town* . . . the reason being, they said, the wage scales in Philadelphia paid to men working in the plant there were lower than the scales paid to the men here."

There the defendant union was demanding that the plaintiff-employer *agree* with it not to purchase in Philadelphia and import into the District of Columbia any cakes made in Philadelphia where a lower wage scale was being paid. The Court of Appeals held that the Union had a lawful right to demand *such an agreement* and to close down the plaintiff's business in order to coerce such an agreement,—notwithstanding that both the object and the express provisions of the agreement would prevent the plaintiff from securing, through interstate commerce, products for its shop.

Obviously, if the union had the right to destroy the plaintiff's business in order to coerce the agreement which it demanded, its obtaining that agreement could not be criminal.

Other Controlling Decisions

U. S. v. American Federation of Musicians, 318 U. S. 741;

Bakery Drivers Local v. Wohl, 315 U. S. 769;

American Federation of Labor v. Swing, 312 U. S. 321;

Milk Wagon Drivers' Union v. Lake Valley Co., 311 U. S. 91;

New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552;

Lauf v. E. G. Shinner Co., 303 U. S. 323;

Senn v. Tile Layers Union, 301 U. S. 468;
Amer. Foundries v. Tri-City Council, 257 U. S.
 184; 209;
Barker Painting Co. v. Brotherhood of Painters,
 15 Fed. (2) (C. C. A. 3) 16;
International Ladies Garment Workers' Union v.
Donnelly Garment Co., 119 Fed. (2) (C. C. A. 8)
 892;
Taxi-cab Drivers' Local Union v. Yellow Cab Co.
 123 Fed. (2) (C. C. A. 10) 262;
International Ass'n v. Pauly Jail Bldg. Co., 118
 Fed. (2) (C. C. A. 8) 615;
U. S. v. Local 807, 118 Fed. (2) (C. C. A. 2) 684;
 315 U. S. 521;
Green v. Obergfell, 121 Fed. (2) (Ct. of App. D.
 C.) 46;
U. S. v. Gold, 115 Fed. (2) (C. C. A. 2) 236.

POINT IV

The case of *United States v. Brims*, 272 U. S. 549,
 has no application for a number of reasons. If it can
 have any bearing, that bearing makes for a reversal.

These reasons are:

1. The case was decided on November 23, 1926,—six
 years before the Norris-LaGuardia Act was enacted.
2. It was decided at a time when *Duplex Co. v. Deering*,
 254 U. S. 443, was supposed to represent as regards
 labor unions the proper view of the Sherman Act and the
 Clayton Act.
3. The Supreme Court did not undertake to pass on
 any question except the holding of the Circuit Court of
 Appeals (6 Fed. (2d) 98) that the evidence was insuffi-
 cient to support the indictment as the Circuit Court of
 Appeals interpreted it.

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In other words, the Supreme Court did not reinstate the verdict or order a new trial. It merely held that the evidence was sufficient for that purpose, and then sent the case back to the Circuit Court of Appeals to determine whether any of the "other assignments of error" presented by the defendants were proper.

4. The Supreme Court's decision turned on a question of fact peculiar to that Record, to wit, whether or not there was sufficient evidence to sustain the charge in the indictment and the finding of the jury that the agreement in the case was not one "merely whereby union defendants were not to work upon non-union made millwork" wherever it came from (p. 551), but rather was an agreement in the interest of Chicago manufacturers that the products of their competitors in other states would be effectually kept out of Chicago with the aid of the union which they bribed with an offer of higher wages. The Circuit Court of Appeals had held that the evidence was insufficient to sustain the latter version, whereas the Supreme Court held that the evidence warranted the submission of such an hypothesis to the jury.

In the present case the court instructed the jury that (1153):

"The sole question is whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants."

No such test can be found in the opinion of the Supreme Court in the *Brims* case.

(5) That the combination in that case was instigated by the Chicago manufacturers for their self-interest was emphasized in the brief for the United States before the Supreme Court. To quote an example (p. 38).

"The defendants expected the Chicago manufacturers to largely monopolize that (the local) field of manufacture and sale of millwork formerly carried on by the non-union manufacturers of other states."

In the present instance, the negotiations which resulted in the contracts of 1936 and 1938 were initiated by the demand of the unions for better wages and working conditions (606-10, 614); and it was the unions which demanded the clause that they would "only work on union goods" (609).

POINT V

In the important matters of the Brotherhood's union label and of non-union articles—matters vital to the Brotherhood and trade unionism,—the Trial Court basically erred in its exclusion thereof as irrelevant.

(1) The right of a national or international labor union to adopt a union label and to encourage or bind its members not to work on material not bearing such label or not union-made, is a necessary principle of trade unionism and has never before been rejected judicially as a lawful labor objective.

Even under the prosecution's own interpretation of the indictment, it should have been held relevant for the jury to decide whether the unions' attitude against certain materials involved in the testimony was merely because they came from outside the state, or rather was because they were non-union-made or unlabelled. Yet the jury were instructed to the contrary (1151-2).

The Constitution of the United Brotherhood provided, concerning the union label, as follows (459, 460-1):

"The attached design of label shall be the official label of the United Brotherhood. . . ."

"It shall be the duty of all district councils, local unions and each member to promote the use of trim and shop-made carpenter work, hotel, bank, bar, store and office fixtures, and of church, school, household furniture, etc., and to make generally known to the members of the local union that it is necessary to all mill and shop members and the United Brotherhood that products made in factories, shops or mills where only members of the United Brotherhood are employed should be installed by fellow members."

"Members of this organization should make it a rule, when purchasing goods, to call for those which bear the trademark of organized labor."

The obligations assumed by every member on his initiation include (766):

"I will use every honorable means to procure employment for Brotherhood members, agree to ask for the union label and purchase union-made goods."

The foregoing provisions of the Brotherhood's Constitution express elementary rights of trade unions, both at common law and under the Clayton and Norris-LaGuardia Acts.

Nevertheless, the Trial Court held that these constitutional provisions and the observance of them by the local unions in the Bay Area were irrelevant and not to be considered by the jury. The Court charged (1152):

"Some testimony has been heard here concerning the union label of the United Brotherhood of Carpenters and Joiners of America. In this connection I charge you that whether the millwork and patterned lumber involved in the testimony in this case was manufactured in mills whose employees were members of the United Brotherhood of Carpenters and Joiners of America or of its affiliated unions, or whether such millwork and patterned lumber bore a union label, is not to be considered by you."

On the subjects of the union label and of non-union goods, the Brotherhood submitted various requests for instructions, all of which were refused. These refusals are set forth in the Assignments of Error beginning on pages 1541 *et seq.* and 1566 *et seq.*

(2) Moreover, the Trial Court also ruled throughout the trial that the absence of the union label on articles which came before the union defendants for work or in competition with union-made articles, was wholly immaterial and irrelevant; and that, as regards any instance being put in evidence by the prosecution, the defense could find no support in the fact that the articles involved were non-union-made, or unlabeled.

Take, for instance, the following from the cross examination of the prosecution's witness, E. W. Yates. On direct examination Yates had testified that he was the manager of F. S. Buckley Door Company which specialized in sashes and doors (347); that his concern had brought in from out the state some four or five carloads of interior woodwork (348); and that the local union had successfully demanded that, since this material was not union-made, the Company (349)

"enter into an agreement to operate a closed shop and stamp the goods we sent out of our place."

On cross examination, counsel for the labor defendants sought to show that the goods thus brought to the shop were not only not stamped with the union label but were made by the carpenters' aggressive rival, the C. I. O. This effort the Court completely ruled out as immaterial (365).

The same thing happened with the prosecution's next witness, Willard B. Jefferson. He testified that he brought in some millwork from a point without the state. On cross examination the unions' counsel was prevented by the Court from showing that the material was non-union lumber (369).

These rulings were excepted to (365-366, 597-8, 605), and are assigned as error (1456-7, 1604).

How disastrous to the defense were these and many like rulings is illustrated by the prosecution's own highly experienced witness, Lee Moffett, who testified that the seemingly opprobrious term or placard "Hot Cargo" merely meant "that the shipment came from some mill that did not bear the union label of the United Brotherhood" (201).

(3) Thus, by these exclusions of the unions' proof, the prosecution was enabled to create the erroneous impression that those shipments were picketed or placarded by the labor defendants not in the exercise of their constitutional right of free communication and of opposition to non-union made and unlabelled articles, but merely because the shipments came from without the state. (See *Senn v. Tile Layers Union*, 301 U. S. 468; *Bakery, etc., Local v. Wohl*, 315 U. S. 769.).

POINT VI

The Trial Court erred in refusing the Brotherhood's requests for instructions as to the law governing the question of imputation of guilt to it by reason of any alleged acts of its officers, and in charging the jury as it did on this vital subject,

(1) It is highly significant that in the case of each local union which was indicted certain of its officials were indicted also, whereas the United Brotherhood was indicted but none of its general executive officers were.

Moreover, under the Brotherhood's General Constitution, the local unions were given a very broad autonomy in the matter of government, adoption of laws, trade rules and policies, strikes and other union activities (461-2).

Under these circumstances the United Brotherhood (the unincorporated international body) was vitally concerned to have the jury fully instructed on the law of *the imputation of guilt*, for there was not a particle of evidence that the United Brotherhood through its General Executive Board or the body of its membership did anything at all in the premises or even had any knowledge thereof.

The General Convention is the supreme authority of the Brotherhood. It meets every four years and is composed of delegates elected from all over the United States (559).

The supreme governing body of the United Brotherhood (subject only to its General Convention) is the General Executive Board which consists of a number of members, seven of whom are elected from different regions (558).

Nevertheless, notwithstanding this established background, the Trial Court charged the jury (1138):

"It has been stipulated in this case that labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that Act, separately and apart from the guilt or innocence of their members.

"You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents."

In the case of corporations the Trial Court charged that criminality was to be determined by the following test (1137):

"The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation."

The United Brotherhood excepted and has assigned error (1155-6, 1158, 1529, 1530, 1598).

Obviously, the test or standard thus given to the jury was that applicable in a *civil case*, where there is such a principle as imputed responsibility. But no such principle exists in a *criminal case*, where guilt is and must be personal.

Here there is no proof or even suggestion that the United Brotherhood ever authorized or directed, any of its General Executive Officers or any other agent to commit a crime on its behalf. The authority delegated by the Constitution cannot, by any stretch of the imagination, be deemed to include commission of crime for or in the name of the United Brotherhood.

(2) In this criminal case the real test or standard applicable to the United Brotherhood is thus stated in Section 106 (U. S. C. A., Title 29) of the Norris-LaGuardia Act:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

In consequence, the United Brotherhood asked the Trial Court to instruct the jury (Request 56, p. 1173):

"You are instructed that no labor union or organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find (896) upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof."

It also asked the Trial Court to instruct the jury (Request 55, p. 1172):

"You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act."

The United Brotherhood also was vitally concerned to have the jury instructed that the United Brotherhood was not responsible *ipso facto* or on any principle of imputation for any criminal acts of any of its local unions or district councils. The following request on this subject would seem elementary (Request 57, p. 1173):

"You are instructed that an international trade union, that is, the international body, is not responsible for the acts of a district organization or union affiliated with and chartered by it except as such international body expressly authorizes the act of the local union or association. The International Brotherhood of Carpenters and Joiners of America cannot be found guilty in this case unless you find that it authorized acts to be done, or performed such acts with the intent of restraining interstate commerce pursuant to a conspiracy with the employer defendants to act as the instrument of the employers to suppress competition."

All these requests were refused. There are exceptions and Assignments of Error (1155, 1158, 1602, 1532, 1598-9).

(3) That the Court's charge and its refusals of Requests 55 and 56 *supra* were erroneous is determined by the decision of the Circuit Court of Appeals for the Second Circuit in *United States v. International Fur Workers Union*, 100 Fed. (2d) 541, certiorari denied 306 U. S. 653.

In that case, in a prosecution under Section 1 of the Sherman Act, a verdict of guilty was rendered against an international union (International Fur Workers Union of the United States and Canada) and against a number of its local unions and certain officers of the international and of the local unions. This verdict against the international union was reversed by the Circuit Court of Appeals for the very error that occurred in the present case. To quote (547):

"But an officer of an unincorporated association, no more than an officer of a corporation, is not authorized merely by virtue of his office to make his principal a party to an unlawful conspiracy. See *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 45 S. Ct. 551, 69 L. Ed. 963; *Hill v. Eagle Glass & Mfg. Co.*, 4 Cir., 219 F. 719, modified on other grounds in *Eagle Glass & Mfg. Co. v. Rowe*, 245 U. S. 275, 38 S. Ct. 80, 62 L. Ed. 286. All that the court said on this subject was that if the individual defendants did the things charged against the unions 'upon behalf of the unions,' they might be found guilty along with the individuals. To this the appellant unions excepted. It was erroneous; it excluded the issue whether the unions had authorized or ratified what their officers did upon their behalf. For this reason the conviction of each of the labor union appellants must be reversed."

In *U. S. v. Local 807*, 118 Fed. (2d) (C. C. A. 2) 684, Judge Clark in his concurring opinion said (p. 688):

"It is hornbook law that, absent a clear legislative intent, an unincorporated association does not commit crimes, 7 C. J. S., *Associations*, § 17, p. 43."

(4) That the Court's refusal of Request 57 *supra* was also error is conclusively determined by *Coronado Co. v. United Mine Workers*, 268 U. S. 295, and *Truck Drivers' Local v. United States*, 128 Fed. (2d) (C. C. A. 8) 227.

In the *Coronado* case, the plaintiff sued to recover damages for an alleged conspiracy by the defendants in vio-

lation of Section 1 of the Sherman Act. In the Trial Court there was a directed verdict and judgment for the defendants which was affirmed by the Circuit Court of Appeals. The Supreme Court affirmed this determination in the case of the International Union of Mine Workers of America, but reversed it in the case of the defendant local unions and of the defendant individuals who were officers of the International and of the local unions,—thus drawing a sharp distinction between, on the one hand, the responsibility and liability of an International Union under Section 1 of the Sherman Act and, on the other hand, its officers and local unions and their officers.

In that case one James K. McNamara, who was himself a defendant and secretary of one of the defendant local unions, had turned state's evidence and had testified that he had had a talk with the defendant John P. White, who was President of the International, in which White in effect instructed him to do various illegal and violent acts to prevent coal from being mined and sent into interstate commerce. For example, White said (302):

"If they (the operators) do that (open the mine) we must prevent the coal from getting into the market, because if Bache coal, scab dug coal got into the market it would only be a matter of time until every union operator in that country would have to close down his mine, or scab it, because the union operators could not meet Bache competition. When you go back to Hartford, I want you to tell the men what I have told you, but don't tell them I have told you."

McNamara further testified that White also told him (303):

"Now you boys will not lose a day and your expenses will be paid for every day you are in this trouble."

McNamara further testified (303):

"It was generally understood that the National Organization was going to pay us for the time we lost

... and I thought the only man to go to would be White to get it, because he was the National President."

McNamara further testified that after the violence and strike he met White at Hartford and asked him (303):

"When will I get my money that I was promised for this work?" to which White replied: "I will take it up with the Board as soon as I can."

White made speeches of "earnest approval" of the strikes, and reported on them to the International Board. Editorials in the International's magazine defended them (p. 300).

Nevertheless, and notwithstanding that the case before it was merely a *civil case*, the Supreme Court held that these acts by the President of the International and the acts of conspiracy and violence by local unions and their officers and members did not bind and render liable the International. The Supreme Court quoted from the General Constitution of the United Mine Workers of America provisions which somewhat resemble the General Constitution of the United Brotherhood of Carpenters and Joiners of America, and then said (360):

"It does not appear that the International Convention or Executive Board ever authorized this strike or took any part in the preparation for it or in its maintenance, or that they ratified it by paying any of the expenses."

(5) Also conclusive *a fortiori* is the decision of the Circuit Court of Appeals for the Eighth Circuit in the criminal case of *Truck Drivers' Local No. 421, etc. v. United States*, 128 Fed. (2d) 227, —decided May 22, 1942.

There, Truck Drivers' Local No. 421, its financial secretary and business agent were convicted on an indictment under Section 1 of the Sherman Act. This conviction was affirmed as to the financial secretary, but was reversed as

to the union and the business agent, on the ground that the evidence was insufficient.

In reversing the conviction of the union, the Circuit Court of Appeals held that the union could not be found guilty because of the actions of its president (who had also been indicted but died before the trial), or because of the actions of a subordinate body of the union known as the "milkmen's division", or because of the actions of the members of such subordinate body, or because of the actions of the union's financial secretary.

The Circuit Court discussed at length the aforesaid decision of the Supreme Court in the *Coronado* case and quoted therefrom; and then said (p. 235):

"We do not believe that on the record before us a jury could be permitted to find that the actions of the milkmen's division and its members, the efforts of the president of the union and the hearings held by the disputes committee and the executive board could be imputed to the union as a matter of general agency. To bind the union in a situation such as this, actual and authorized agency was necessary; mere apparent agency would not be sufficient to take the matter to the jury, unless the circumstances were so strong as competently to support an inference of actual authority."

See also *Barker Painting Co. v. Brotherhood of Painters*, 15 Fed. (2d) (C. C. A. 3) 16, 18.

November 6th, 1944.

Respectfully submitted,

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CHARLES H. TUTTLE,
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Of Counsel for Petitioner.

CHARLES H. TUTTLE,
*Attorney for Petitioner,
and a member of the bar of this Court.*

APPENDIX A
Opinion of the Court Below

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

LUMBER PRODUCTS ASSOCIATION, INC.,
 a corporation, *et al.*,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 10,011

Aug. 23, 1944

Upon Appeal from the District Court of the United States
 for the Northern District of California, Southern Division

Before: GARRECHT, DENMAN and HEALY, Circuit Judges.

DENMAN, Circuit Judge:

This is an appeal from a judgment of the district court sentencing appellants for violation of Section 1 of the Sherman Anti-Trust Act, on finding the several appellants guilty or acting on pleas of *nolo contendere*. They were among a large group indicted on two counts for com-

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bing and conspiring to violate that Act. The second count was dismissed upon motion of the government.

For convenience in describing the parties to the alleged conspiracy, one group of the present appellants will be designated as the "Union Group" and the remaining appellants as the "Manufacturer Group." The former group is composed of the United Brotherhood of Carpenters and Joiners of America, an international union affiliated with the A. F. of L., two area Trade Councils, two local unions, affiliated with the above international, and several officers and members of these associations. The latter group is composed of Trade associations, corporations and individuals.

All of the appellants were engaged in or otherwise associated with the manufacture, distribution, sale or installation of mill work and patterned lumber in the San Francisco Bay Area.

The facts alleged to constitute the charge of the indictment show that prior to 1936 at least 80% of the mill work and patterned lumber used in the San Francisco area was produced in states other than California. The principal area of production was in Washington and Oregon. The processing of lumber products in the latter two states was with the most developed equipment and on a large scale mass basis in which, in some instances, raw timber was converted into finished lumber in a single continuous operation. This method of production was in marked contrast to the apparently more costly, small plant operations of the Bay area manufacturers, in which the skilled labor of craftsmen was used. The labor used in the Washington and Oregon production, though organized, was on a lower wage scale than that of the Bay area mill workers at the time the alleged conspiracy was formed, though it does not appear that the annual wage of the out-of-state labor was lower or their cost of living as high.

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The Manufacturer Group involved here produced substantially all the mill work and patterned lumber made in the area. All of the craftsmen skilled in the production or installation of these products had to be members of a local of the Union Group before they could work for the Manufacturers. It was alleged that under these circumstances the combined power of these two groups was great. It is apparent that such monopoly power well could impose a greatly increased cost to the smaller home builder and others in the great building activity of such a state as California, with its extraordinary immigration of the past two decades.

It was further alleged that in 1936 the Union Group demanded an increase in wages. This demand was acceded to by the Manufacturer Group in exchange for an agreement by the unions to prevent the sale and shipment to the Bay area of products manufactured outside of California. This agreement was reduced to a written contract between the parties in which they agreed that "... no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or other distributors that do not conform to the rates of wage and working conditions of this agreement." This exclusionary clause was alleged to be subject to certain named exceptions.

The Manufacturer Group circulated among the trade price lists and market reports which effected artificial and noncompetitive prices for mill work and patterned lumber. These were enforced by the Union Group by picketing, work stoppages and other means, preventing the use of materials purchased in violation of the terms of the contract.

On the basis of the alleged facts and conduct it was finally charged that the object and effect of the combination was to stop the sale of mill work and patterned lum-

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ber by manufacturers in other states in the San Francisco area and to prevent lumber yards and jobbers in that area from purchasing such out-of-state products and thereby permit the raising and fixing of prices in such products. It was further charged that the conspiracy had succeeded in its object and that prices of mill work and patterned lumber had been arbitrarily and unreasonably increased.

All of the defendants demurred to the indictment. This was overruled by the trial court. Thereafter all the parties here making up the Manufacturers Group withdrew their pleas of not guilty and entered pleas of nolo contendere.² The parties falling in the Union Group maintained their plea of not guilty, were tried and found guilty by verdict of a jury.

The first issue common to all of the appellants is the sufficiency of the indictment. It is contended that the trial court erred in refusing to sustain the demurrers which were based on the ground that the allegations of the indictment failed to state a crime under the Sherman Act in that the agreement between the parties merely embodied legitimate objectives of labor, successfully obtained through the process of collective bargaining in termination of a labor dispute. Appellants urge here that the doctrines of the Supreme Court decisions in *Apex Hosiery v. Leader*, 310 U.S. 469, and *United States v. Hutcheson*, 312 U.S. 219, are controlling.

Appellants argue that nothing unlawful is charged, for it is well established that labor may lawfully refuse to work on any product it sees fit and from this freedom it follows that labor may make the intention of such a refusal the terms of a contract.

The government argues that the allegations of the indictment cannot be so narrowly construed. They must be viewed in the light of all the facts charged, and, though

2. Cf. *Edwards v. United States*, 312 U.S. 473.

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such a provision in a contract may not be invalid on its face, the factual context in which it will work, its alleged purpose and ultimate effect cannot be ignored in determining its actual validity. Considering all these factors the government contends that the agreement was for the express purpose of committing the offense of violating the Sherman Act; that the gains in wages to the labor conspirators and in the profits to the co-conspiring manufacturers from their monopoly grip on the home builder and other consumers of such lumber products in the San Francisco area were not mere fortuitous and incidental results of the agreement; and that Congress in enacting the Norris LaGuardia Act did not intend that labor should be free so purposefully to conspire with its employers to exact a tribute from the consumers of their products.

We agree with the government that the charges of the indictment and the factual allegations made in their support are not of a restraint upon commerce merely incident to the ordinary disruption of the production of an employer, arising out of a protracted labor dispute and necessary to the achieving of a legitimate objective of organized labor. Rather there is here alleged a combination for a direct restraint upon commerce with an objective of destroying the competition of that commerce and permitting the fixing and maintenance of the local area prices at an arbitrary, artificial and non-competitive level. It is such intended restraints for such an objective at which the sanctions of the Sherman Act are directed.³

Nor are the appellants aided by the statement in the Apex case that the restrictive effect upon the power of an employer to compete in commerce by the elimination of price competition based on differences in labor standards, resulting from the successful consummation of a wage

3. See 28 Cal. L. Rev. (1940) 747, 759.

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agreement by a union, is not within the Sherman Act. Not only was the price competition of mill work and patterned lumber products of Washington and Oregon attributed in part to more efficient, technically improved, large scale methods, but here the elimination of competition was not a result merely incidentally flowing from the achieved objective of increased wages but the means of obtaining it. Also there is not here the protection or preservation of a previously existing interest leading reasonableness to a restraint, but rather the bold pursuit of restraint for the direct mutual advantage of the parties, to be gained by the monopoly price tribute from the consumer.

Because organized labor may lawfully strike, picket or boycott in support of its demands for higher wages which an employer may or may not be able to pay, it does not follow that labor and the employer may agree to use these weapons to destroy the competition of interstate commerce and give the employer a monopoly price raising contract and thereafter "split the take." Such conduct is not within the scope of the immunity described in the Apex case.

Likewise the monopoly purposes and objective of the agreement between the labor unions and the manufacturers distinguishes the conduct charged here from that held under the provisions of the Norris LaGuardia Act to be immune from prosecution in *United States v. Hutcheson*, supra. In that case the dispute was between two unions and the effect on interstate commerce was an incident to and not the objective of the defendants' conduct. That case clearly indicates that, as shown in the Apex case, there is an area of conduct of combined labor and capital violative of the Sherman Act which is not immunized from prosecution under the Norris LaGuardia Act. This appears in the statement of Mr. Justice Frankfurter's opinion, page 242, that "So long as a union acts in its self interest and

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does not combine with non-labor groups,⁴ [footnote 4 below] the licit and the illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

In *United States v. Brims*, 272 U.S. 549, so cited in the *Hutcheson* case, the Supreme Court held violative of the Sherman Act a conspiracy of manufacturers of mill work, building contractors, and union carpenters, to check competition from non-union made mill work coming from other states, to accomplish which the manufacturers and contractors were to employ only union carpenters, who would refuse to install the non-union mill work. This combination of labor "with non-labor groups" so held to violate the Sherman Act even lacked the element here charged of the enforcement of the employers' artificial and non-competitive price list, circulated to the trade and forced upon the consumer by the picketing and work-stoppages of the unions. There the conspirators, the Supreme Court states, (page 552) "wished to eliminate the competition of Wisconsin and other nonunion mills which were paying lower wages and consequently could undersell them. Obviously, it would tend to bring about the desired result if a general combination could be secured under which the manufacturers and contractors would employ only union carpenters with the understanding that the latter would refuse to install nonunion made millwork. And we think there is evidence reasonably tending to show that such a combination was brought about, and that, as intended by all the parties, the so-called outside competition was cut down and thereby interstate commerce directly and materially impeded. The "local manufacturers,

4. Cf. *United States v. Brims*, 272 U.S. 549, involving a conspiracy of mill work manufacturers, building contractors and union carpenters.

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relieved from the competition that came through interstate commerce, increased their output and profits; they gave special discounts to local contractors; more union carpenters secured employment in Chicago and their wages were increased. These were the incentives which brought about the combination. The nonunion mills outside the city found their Chicago market greatly circumscribed or destroyed; the price of building was increased; and, as usual under such circumstances, the public paid excessive prices."

In the four cases⁵ succeeding *United States v. Hutcheson*, in which the Supreme Court sustained, without opinion, the dismissals of the indictments, there is a charge of a purpose to restrain interstate commerce, but in no one of them does it appear that the labor dispute is ended and emerging from it are monopolies, previously purposed and intended, in which both labor and employer successfully divide the gain from the price raising of the combination. In three of them the combination is between labor groups alone. In one, *United States v. Carozzo*, 313 U.S. 539, the Supreme Court sustained the district court (37 F. Supp. 191, 193) which had dismissed the indictment in which it was charged that the combined labor unions "by means of strikes and threats of strikes . . . force paving contractors in the Chicago area to enter into working agreements with the defendant Council requiring paving contractors using truck mixers in the Chicago area to employ the same number of men which they would employ if truck mixers were not used; . . ."

Here is no allegation of a combination of unions and employers to restrain interstate commerce such as is referred to in the opinion in the *Hutcheson* case. If there be

5. *United States v. Building & Construction Trades Council*, 313 U. S. 539; *United States v. Carozzo*, 313 U. S. 539; *United States v. International Hod Carriers, etc. Council*, 313 U. S. 539; *United States v. American Federation of Musicians* (47 F. Supp. 304) 318 U. S. 741.

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an impediment to the interstate commerce in truck mixers of concrete by so forcing the employers to the extra expense of mixing concrete by hand labor, it is, as stated in the opinion of the district court "only indirect and incidental," and as that opinion also states "In the instant case no acts were alleged to have been performed which would constitute restraint of trade in commercial competition in the marketing of truck mixers." 37 F. Supp. 196. Furthermore, the coercion of the employers is against the employers' interest and solely for the interest of the union members. The situation is strikingly different from one where the agreement between employers and unions for the exclusion of the articles from outside the state is purposed at once to raise prices by monopoly pricing and create an increased wage by such pricing.

Here the Manufacturer Group and the Union Group are no longer "participating in or interested in a labor dispute" as that term is used in § 5 of the Norris La-Guardia Act.⁶ The dispute is past. The labor and non-labor groups are combined. The acts described in § 4 of that Act⁷ and section 20 of the Clayton Act,⁸ some of which

6. "No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this title." 29 U. S. C. § 105.

7. "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

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"are charged in the indictment here to have been committed by the now non-disputant unions and their members and their manufacturing employers, are not to secure any legitimate advance of the laborer's interest. They are squeezing implements to extort what, in effect, is a capital levy on the home builder and other consumers. Their lack of organization makes them helpless to defend themselves against the monopolistic conspirators.

We hold that Congress in enacting the Norris LaGuardia Act and the Clayton Act did not give immunity to the "wrongness" and the "illicit" of this character of combination of labor with non-labor groups. The district court committed no error in overruling the demurrers and in refusing to dismiss the indictment.

It is contended that the trial court erred in denying the defendants' motion for a directed verdict in that there was

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this title." 29 U.S.C. § 104.

8. 38 Stat. 738, 29 U.S.C. § 52. "No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor; or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

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insufficient evidence to support the charges of the indictment. But in reviewing the record we find evidence of agreements between the two groups and conduct on the part of each directed at the elimination of competition from the northern products by the price control and other acts from which a jury well could find a concert of action and purpose to unlawfully restrain interstate commerce. Therefore, the trial court did not err in submitting the case to the jury.

Appellant United Brotherhood of Carpenters and Joiners of America does not argue here the question of the sufficiency of the evidence to support the charge that some form of agreements existed between the local labor groups and the employer group or that they may have had as their objectives the suppression of commerce. But it does raise, separately, the issue of whether there was evidence of its knowing of or being a party to the found combination or conspiracy.

There was evidence showing knowledge and participancy by the president, vice-president and field representative of the international in the negotiation of working agreements in the Bay area between the local organizations and the mill operators. There was also evidence of approval of those agreements by those officers acting in their capacity of final arbiters of problems or differences which might arise between locals. We cannot say there was nothing upon which the jury could find this appellant, through its authorized agents in pursuit of its accepted policy, was a party to the combination.

The Alameda County Building and Construction Trades Council attacks the sufficiency of the evidence as to it in the same manner. We find ample evidence of the Council aiding in the enforcement of an agreement to exclude certain types of lumber and determining whether certain dealers should be placed on the unfair list for violating the

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agreements from which the jury could find participation in the conspiracy. The trial court did not err in refusing an instructed verdict for this appellant.

Error is claimed by two of the defendants, Christian A. Wilder and Charles Gustafson, both of the Manufacturer Group, in the trial court's overruling of their plea to its jurisdiction and in rendering judgment and imposing sentence on them. The grounds urged are that they, as individuals, had not been indicted by a grand jury. Rather, it is contended, only the firms of which they are partners had been indicted.

Paragraph 8 of the first count of the indictment states, in part, "The following named individuals, partnerships and corporations . . . are hereby indicted and made defendants herein . . . The legal status and principal place of business or residence of the owners are listed below." There then follows a page set out in five columns. In the first of these are listed eight names of business houses. The second column lists "Legal Status," i.e., corporation, partnership, individuals. The third column lists "Names of partners or individuals," and included among the names under the heading are those of Wilder and Gustafson.

It requires no strained construction to find the obvious. Clearly those two defendants were included among the "following named individuals" who were indicted. The trial court did not err in its ruling on their pleas and motions.

Appellants of Local No. 42 and Local No. 559 of the United Brotherhood of Carpenters and Joiners assert that the trial court erred in sustaining the government's demurrer to their pleas founded on an alleged immunity said to arise out of the forced production of subpoena duces tecum of the records and documents of these unions by the grand jury. This contention has been foreclosed by the recent decision of the Supreme Court in *United States v. White*, U.S. , decided June 12, 1944.

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Like error is claimed by appellants Ryan, O'Leary and Helbing, who were officers or business agents of the Locals or Councils indicted. Pursuant to subpoenas duces tecum addressed to their organizations, these men appeared before the grand jury and, under protest, produced the desired organizational records and documents. It is clear from the decision in the White case that these defendants could not claim a personal immunity arising out of the production of documents held in their custody in an official capacity.

However, in addition to their producing union books and papers, each was forced to testify before the grand jury. The question is then raised as to whether their testimony concerned in a substantial way their own connections with the transactions for which they were subsequently found guilty as charged. *Heike v. United States*, 227 U.S. 131, 144. The trial court found no such substantiality and concluded they were not immune from prosecution under 15 U.S.C.A. § 32.

The transcript of their testimony given before the grand jury is included within the record now before us. *Ryan v. United States*, 128 F. 2d 552 (CCA-9). It shows that each identified the organizational records produced; that each was an officer or agent of his respective union, and that each outlined the organizational structure and relationships between the several unions. None of such testimony is within the area of immunity. *United States v. Greater New York Live Poultry C. of C.*, 34 F. 2d 967 (D.C.N.Y.), cert. denied.

The grand jury transcript further shows that Ryan identified as being his own a signature on a contract dated September 21, 1926. He was then asked, "Do you recall the circumstances under which that contract was negotiated . . . ?" and answered by describing how conference committees chosen by the parties, the unions and employ-

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ers, negotiated such agreements. The next question was, "Now, in connection with the contract I have just handed you, . . . did you personally sit in at these negotiations?" to which he answered "Yes."

True, that identification by an officer of his signature on a contract entered into by his organization may not have sufficient relationship to the investigated transaction to warrant granting immunity. Cf. *United States v. Minoise Alcohol Co.*, 45 F. 2d 145, 149 (CCA-2). Certainly the description of the methods of negotiations in themselves are not within the protected area. Where an individual is required to answer whether he participated in the negotiations of a contract a clause of which is subsequently set forth in an indictment found against him charging its operation to be one of the means "of effectuating . . . [an] . . . unlawful combination and conspiracy," it cannot be said that his testimony has no substantial bearing on a transaction and its criminality founded on merely some imaginary hypothesis. Ex parte Irvine, 74 Fed. 954, 960; *Mason v. United States*, 244 U.S. 362, 365; *United States v. Molasky*, 118 F. 2d 128, 134 (CCA-7); *Doyle v. Hofstadter*, 257 N.Y. 244, 177 N.E. 489. Proof of this portion of the contract was treated by the government as one of the vital links in the chain of evidence summing up the existence of a conspiracy to restrain trade, cf. *United States v. Murdock*, 284 U.S. 141, 150, and acknowledgment of having participated in its negotiations would "tend" in rather a strong sense to incriminate him. *United States v. St. Pierre*, 132 F. 2d 837, 838 (CCA-2). That the contract on its face may have been lawful, *United States v. Weisman*, 111 F. 2d 260, 262 (CCA-2), or that the defendant signed it in an official capacity cannot be said to destroy his immunity as an individual in all circumstances.

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As to appellant O'Leary, in addition to identifying to the grand jury union documents explaining entries in the minute books, describing the labor conditions prevailing during the period of the conspiracy, negotiations over wages, he was asked if he worked in a "Negotiating Committee" made up of union representatives and employer representatives which worked on a stabilization agreement. He answered in the affirmative. Further testimony before the grand jury, warranting him immunity is stated in the footnote."

Regarding the testimony of appellant Helbing before the grand jury, information of negotiations between the unions and the employers similar in kind to that of O'Leary was given. In addition he was asked if he knew a Mr. Jones of Jones Hardwood Company. He answered, "I have spoken to the gentleman."

9. O'Leary was further asked: "Now, referring to the minutes of January 13, 1939, I notice that it states, 'Business Agent O'Leary reported checking over the sidings and freight sheds and mills during the week and not finding any hot mill work.' Do you recall the circumstances surrounding your activities as mentioned in this excerpt from the minutes?" Answer "Yes." Then the following questions and answers were put and given.

Q. "Would you state them to the Grand Jury?"

A. "Well, every once in a while somebody will break out with a rash over there that there is a hell of a lot of non-union mill work coming in from the North—."

Q. "That is, from Washington and Oregon?"

A. "Yes, I guess they don't come in from British Columbia, and they want to know what the hell the business agent is doing.—How are we going to live and work here if that cheap work comes in?—And naturally enough, they want me to go out and check on it."

Q. "When you go out and check, what do you do?"

A. "Go around to all the sidings and look them over, and see if there is any cars setting on them, and see what is in them."

Q. "If you find that there is any so-called 'hot mill work' in any cars on any of these sidings, what do you do then?"

A. "Go to the employer, or the man that is purchasing them and try to get him to use local made mill work.—Now, in using the word 'mill work' it has to do with moldings—there was a time when all surfaced material used to bear the label, and the carpenters would not handle it unless it did. At present, why, four-side stuff can come in; we don't bother about it, but if there is moldings comes in we object to it."

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Q. "As a matter of fact, you called on him, didn't you and asked him to put up one of those placards that the Grand Jury has seen here?"

A. "He asked me first—he sent me a letter in reference to certain things and conditions, and I went down to see Mr. Jones."

Q. "And you asked him at that time to put up a placard didn't you?"

A. "Yes, to boost local material."

Q. "Now, do you recall some doors that were coming in for a Kerry Building job down here, from a concern in Washington?"

A. "No, I can't recall that."

Q. "You don't? Don't you recall that Mr. Jones had ordered some doors from this concern in Wisconsin and that he couldn't bring them in here?"

A. "No, he was given concessions—I didn't transact that particular part of it. There were two of us on the job here, part of the time last year."

Q. "Do you recall Mr. Helbing, that due to the fact that this company in Wisconsin did not have the label, that Mr. Jones obtained certain letters from them stating that they were fully organized A. F. of L. with their local union number on those letters? Do you recall that?"

A. "No, I don't. What I did tell Mr. Jones was this, when he asked me the question in reference to those doors. I said, 'When the time arrives, when you have doors coming in here, why, we will take it up.'"

Among the objects of the conspiracy alleged in the indictment was the exclusion of mill work and patterned lumber manufactured in states other than California. Among the means and methods alleged was defendants by means of pickets and threats to picket, forced the Jones Hardwood Company of San Francisco to cancel an order for mill work and patterned lumber from the Roddis Lumber and Veneer Company of Marshfield, Wisconsin.

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At the trial the government introduced a letter addressed to Helbing's local in which the Jones Hardwood Company inquired whether there were restrictions on certain doors manufactured in Wisconsin. During the course of the government's cross-examination of Helbing he was again interrogated regarding his conversations with Jones.

Apart from O'Leary's and Helbing's participation in the negotiations between the unions and the manufacturers, it is clear that the grand jury questions bearing on their own conduct relating to the exclusion of the out-of-state products coming into the area had a very substantial relationship to the transactions found to restrain commerce and a direct tendency to incriminate them if other facts were found. To subpoena a person to appear and testify before a grand jury investigating possible unlawful restraints on interstate commerce and then force him to answer in what manner he kept articles of such commerce from being sold, certainly is to invade the area of incrimination and raise the immunity granted by 15 U.S.C.A. § 32. The trial court erred in refusing to dismiss the indictment as to these three defendants.

Those appellants who pleaded not guilty and were tried excepted to certain instructions such as the following:

"In this case the question is whether the labor union defendants entered into a combination with the non-labor defendants whereby the defendants intended to or did bring about an undue restriction of or interference with interstate commerce in mill work or patterned lumber." "If you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase patterned lumber and mill work manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and mill work manufactured in States out-

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side the State of California; . . . such an agreement or understanding would constitute a violation of the Sherman Act as charged in the indictment. It would constitute no defense under the law, either to the employer defendants or to the union defendants that the agreement or understanding may have been arrived at in settlement of a labor dispute; . . ."

These instructions were covered by an overall instruction based upon the rule stated in the Hutcheson case. It is "Labor unions or their members may join together in promoting their self-interest, even though their acts in so doing may result in an undue obstruction of interstate commerce. But they can do this only so long as they act in their self-interest and do not combine with non-labor groups." There is abundant evidence convincing to us as well as to the jury, that the unions did not confine their efforts to promoting their self-interest but combined with the employers, creating a monopoly excluding mill work from other states, for their employers' interest as well. We find no prejudicial error in the instructions.

The judgment against all the appellants, save Ryan, O'Leary, and Helbing is affirmed. As to the latter three, the judgment is reversed and as to them their immunity requires that the indictment should be dismissed.

Affirmed in part and reversed in part.

(Endorsed:) Opinion. Filed Aug. 23, 1944. Paul P. O'Brien, Clerk.

APPENDIX B

**Opinion of the Circuit Court of Appeals
—for the Second Circuit, Oct. 12, 1944**

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 339—October Term, 1943.

(Argued May 10, 1944

Decided October 12, 1944.)

ALLEN BRADLEY COMPANY, *et al.*,

Plaintiffs-Appellees,

—v.—

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, *et al.*,

Defendants-Appellants.

Before:

SWAN, AUGUSTUS N. HAND and CLARK,

Circuit Judges.

Appeal from the District Court of the United States for
the Southern District of New York.

Action by Allen Bradley Company and ten other companies manufacturing electrical equipment against Local Union No. 3, International Brotherhood of Electrical

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Workers, and six named persons individually, and as officers or agents of the Union, for an injunction and declaratory judgment of illegality of certain alleged union activities. From a judgment for the plaintiffs, 51 F. Supp. 36, upon report of a special master, 41 F. Supp. 727, the defendants appeal. Judgment reversed and action dismissed.

HAROLD STERN, of New York City (George Rosling and Saul Pearce, both of New York City, on the brief), for defendants-appellants.

WALTER GORDON MERRITT, of New York City (McLanahan, Merritt & Ingraham, Burgess Osterhout, and Hyler Connell, all of New York City, on the brief), for plaintiffs-appellees.

CLARK, Circuit Judge:

Defendants, Local Union No. 3 of the International Brotherhood of Electrical Workers, American Federation of Labor, and certain of its officers, appeal from an order of the district court enjoining various activities of the union and declaring them to be a conspiracy in restraint of trade in violation of the Sherman Antitrust Act, 15 U. S. C. A. § 1, *et seq.*, and laws amendatory thereof. The enjoined activities constitute in sum any and all actions on the part of the union which would tend to boycott from the New York City area market electrical equipment manufactured by the various plaintiffs.

Plaintiffs filed their complaint below in December, 1935. The following year most of the plaintiffs joined in a companion suit against the union, and additional defendants, for treble damages at law under the Sherman Act; and

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this has remained pending in the district court without trial. The parties agreed to refer the present action to a special master for determination of "all issues of law and fact," and it was so ordered. After two and one-half years of hearings, at which, as the master states, more than 400 witnesses were examined, some 1,700 exhibits were presented, and some 25,000 pages of testimony adduced, he filed an opinion, October 2, 1941, in which he discussed the facts and the law, concluding that the plaintiffs should have judgment, and asked the parties to submit proposed findings of fact and conclusions of law, 41 F. Supp. 727. The parties having complied, the master, on November 23, 1942, filed his final report, containing lengthy findings and conclusions, which, upon cross-petitions to confirm and dismiss, the court below confirmed with some limited alterations and additions to the findings. 51 F. Supp. 36. The final decree, covering 121 printed pages of the record, included these findings, 374 in number, with 26 conclusions of law, as well as the form of injunction to be issued, and the declaratory judgment declaring "that the combination and conspiracy and the acts done and being done down to the date of the conclusion of the taking of testimony herein before the Special Master, in furtherance thereof, all as set forth in the findings of fact as made and adopted by the Court herein, are unlawful and contrary to" the Sherman Act. This appeal is taken upon only the findings and judgment, and hence does not seek any modification of the facts found.¹

1. These union activities appear to have been in other litigation in the court below. They were the subject of four indictments against the union and its officers and others under the Sherman Act, which were sustained upon demurrer as not involving a "labor dispute" within the statutory exemption hereinafter discussed. *United States v. Local Union No. 3*, D. C. S. D. N. Y., 42 F. Supp. 783; *United States v. New York Electrical Contractors Ass'n*, D. C. S. D. N. Y., 42 F. Supp. 789; cf. 42 Col. L. Rev. 1067, 40 Mich. L. Rev. 1244. The court records show, however, that petitions for reargument were filed by defendants after the decision in *United States v. American Federation of Musicians*, 318 U. S. 741, discussed below; and thereafter on September

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The eleven plaintiffs in the action are manufacturers of electrical equipment whose factories are located for the most part without the New York City area. Several operate under collective bargaining agreements with local unions in their localities. Local 3 is the powerful local for the five boroughs of New York City of the International Brotherhood of Electrical Workers, itself one of the most influential members of the American Federation of Labor. Local 3 possesses approximately 15,000 members, divided into numerous separate classifications. Charter A members, numbering around 7,000 consist generally of journeymen electricians engaged in the fabrication and installation of electrical equipment, while Charter B members, numbering around 8,000, are largely employees of local manufacturers producing electrical equipment. Sole voting power rests in Charter A members, and Charter A membership is entailed for sons and brothers of existing members. Prior to 1928, Local 3 was composed only of the present Charter A members; but the membership now covers virtually everyone working on or producing electrical equipment in any way within the area. Although there are other officers and an executive committee, the nerve center of the union rests in the office of the business manager, who, among other things, has the complete power to select which members shall fill existing job vacancies.

The acts constituting the alleged conspiracy in restraint of trade which resulted in the boycott of plaintiffs' products are all elements of an extensive campaign under-

22, 1943, the cases were not pressed. Slightly earlier a union affiliated with the C. I. O. sought an injunction forbidding its boycott by Local Union No. 3, the International Brotherhood of Electrical Workers, and others, and basing its action upon claimed rights under the National Labor Relations Act; but it was unsuccessful. *United Electrical, R. & Mach. Workers v. I. B. of E. Workers*, 2 Cir., 135 F. 2d 488, affirming D. C. S. D. N. Y., 30 F. Supp. 927; cf. 54 Harv. L. Rev. 513; Boudin, *Representatives of Their Own Choosing*, 38 Ill. L. Rev. 41, 47. The master's opinion herein is discussed in 28 Va. L. Rev. 554 and 5 U. Det. L. J. 132.

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taken by Local 3 to organize the electrical industry in New York City. This occurred with the appointment in 1934 of a new business manager, Harry Van Arsdale, Jr., after the depression years of 1931 to 1934 had left building at a standstill in New York City and found the union with only a quarter of its members employed. Thereafter year by year, as the master reports, Van Arsdale fought for, and gradually obtained for the union members, a reduction in the number of hours of work per week at the basic rate of compensation, as well as an increase in the rate of compensation. Meanwhile the membership of the union greatly increased, so that it was highly successful in unionizing and in obtaining closed-shop agreements in both the local manufacturing and the local contracting branches of the electrical equipment industry. The findings then show that "agreements and understandings" entered into by three groups—manufacturers, contractors, and union—gave them a complete monopoly which they used to boycott the equipment manufactured by the plaintiffs.

While the boycott as found ran the gamut of electrical equipment from highly complicated switchboards and control devices down to novelty lamp shades, the case of the modern switchboard is offered as typical. There are in New York City a number of companies manufacturing switchboards who, before these activities of Local 3, shared an open competitive market with many of plaintiffs. In return for a closed-shop agreement calling for higher wages and shorter hours for employees, however, Local 3 promised these local companies an exclusive market for switchboards within the city, so that they could name their own prices to offset increased production costs. Local 3 carried out its promise with the help of the electrical contractors. It had already won closed-shop agreements from a vast majority of the latter through a series of strikes, threatened strikes, and sympathetic strikes by other unions

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in the building trade, which threatened to tie up all construction work in New York City. It now secured the further terms that union members should work only on switchboards of local manufacture by union shops, and that the contractors should have the sole power to buy materials for any job, with a proviso as additional protection that only products bearing the union label would be utilized. Like the manufacturers, the contractors were not averse to the extra expense of union material and labor, when all competition was thus removed from the field.

The contractors, however, went so far as to organize a voluntary Code of Fair Competition, which stipulated that every contractor should file with the code committee (upon which two officials of the union sat) every bid made by him on any work authorized in New York City, that he must include in his bid 35% of the labor cost for overhead, 10% of the materials' cost for commission, and 6% of the total for management, with price cutting penalized by substantial fines. This code was a part of the union contract with several contractor associations in 1935, but it was disapproved by the International President of the I. B. E. W. and the record is not entirely clear whether thereafter it remained a part of the union contract until the contractors themselves gave it up in 1939.² At any rate, it is found that the union filed no complaints under the code and did not share in the fines or itself take any action against a contractor or cause its members to refuse to stay in the employ of disciplined contractors.

In other fields, with respect to other items of electrical equipment, a similar situation was found to prevail. Only when no local unionized manufacturer made an article was its use permitted; and in such cases, if at all feasible, it

2. The master's opinion states only that there was a sharp conflict in the evidence; the findings, however, are general and conclusory to the effect that the union was bound by the code.

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was required either that the article come from the manufacturer "knocked down," to be put together by union labor, or that the finished article be unwired and rewired upon receipt. For years it has been more economical for the manufacturer to wire at the factory such articles as lighting fixtures and control equipment; but the union required the wiring to be done by its own members on the job, even though, in the case of control equipment, the manufacturer had to complete the wiring before shipment for testing purposes. Curiously, a similar requirement was also in force with regard to some equipment manufactured by Local 3 members in closed Local 3 shops. Switchboards, for example, had to be "knocked down" at the factory and reassembled at the job.

All in all, the situation disclosed by the findings is that of an entire industry in a local area, quite dominated and closed to outsiders by a powerful union, whose members receive as a result exceedingly higher wages, shorter working hours, and improved working conditions, and whose copartners—the local manufacturers and contractors—also gain by the greater profits achieved through the stifling of competition. This has been accomplished by the traditional labor weapons of refusal to work upon disfavored goods, with peaceful and non-violent³ persuasion, picketing, and blacklisting, and now the active participation of the local employers. The boycott, however, is virtually complete against manufacturers, such as plaintiffs, who have no working agreements with Local 3. It makes no difference that most of plaintiffs are located without the jurisdiction of Local 3 and hence could never

3. The absence of violence is significantly emphasized by the finding that "Local No. 3 has encouraged disorder and lawlessness on the part of its members in connection with the above activities by guaranteeing them bail and counsel furnished at the expense of the union in case of their arrest" and has so spent sums for bail and counsel fees for members, as well as by a specific finding that there was no evidence of any violence or any threat of violence against any of the plaintiffs by any of the defendants.

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bargain collectively with it in any event, or that some of plaintiffs are already working under harmonious agreements with other unions. Moreover, as must be expected in cases where a local area is thus closed to outside products, the persons injured will include not only the excluded manufacturers and rival unions, but also—at least initially and very likely continuously—the consuming public, which must pay higher rates (as, indeed, it must also for raising of wages and lowering of hours of work) and does not receive the benefits of improved machinery or methods of operation. Thus it appears that general electrical work and equipment are costly in New York City, and instances are cited where equipment of plaintiffs was turned down for local equipment with the union label at twice or three times the cost. Since the lowest bidder no longer gets city contracts, if it be not a union bid, the city has lost federal grants, which were premised upon acceptance of the lowest bid. An outstanding example of the consequences from this type of economic warfare to third persons is that of one local manufacturer which has two price lists for its products, one for union use within the city at more than twice the price of the other for use without the jurisdiction.

This is only a brief, but, as we believe, a presently adequate, summary of the many pages of record devoted to a statement of the facts. The industry of counsel and of the special master is to be commended; but we are constrained to say that the very verbosity and superfluity of the findings have not aided decision as much as doubtless had been expected. We have had occasion to point out recently that findings, prepared after decision by winning counsel, even though accepted by the court, are not as helpful as the trier's own original views; and this is particularly true when the findings are lengthy and repetitious. *Matton Oil Transfer Corp. v. The Dynamic*, 2 Cir., 123 F. 2d 999,

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1001; *United States v. Forness*, 2 Cir., 125 F. 2d 928, 942, certiorari denied *City of Salamanca v. United States*, 316 U. S. 694; *Peterson Lighterage & Towing Corp. v. New York Central R. Co.*, 2 Cir., 126 F. 2d 992, 996; cf. Preliminary Draft of Proposed Amendments to Rules of Civil Procedure for the District Courts of the United States, 1944, p. 59. Here there is an added difficulty in the incorporation of all the findings in the judgment and their inclusion by express statement in the declaration of invalidity and by implication in the prohibition of the injunction. Doubtless this was done to satisfy requirements that an injunctive order must set forth the reasons for its issuance and describe in reasonable detail the acts to be restrained, Federal Rule 65(d), continuing 28 U. S. C. A. § 383, cf. 29 U. S. C. A. § 109; but a multiplicity of words is as little revealing as a dearth of words. Labor union officers and members are entitled to a more direct and succinct statement of the illegalities of which they are held guilty and which they must cease under penalties of fine and imprisonment. This basic requirement assumes the greater importance here because the course of decision below has left the case not free of ambiguity on a crucial feature. For, as we shall point out, recent decisions have conceded labor unions quite broad powers to refuse to work and to employ peaceful persuasion, but have left open the effect of combinations or conspiracies of unions with non-union elements, particularly for non-union objectives. Thus the nature and purpose of the conspiracies here may quite possibly be the crux of the case.

This ambiguity as to the importance here of the element of conspiracy with non-labor groups—as against other more traditional labor-union activities—apparently stems from a real change in emphasis as the case progressed. Indeed, such a change was but natural, if not necessary, because of the complete reversal of the controlling judicial precedents during the long pendency of this litigation.

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In the original complaint of 1935 the stress is on union power which has forced the contractors to employ only union labor and "through their [defendants'] said control over said electrical contractors" has coerced the latter not to purchase electrical equipment wired or assembled wholly or partly by non-union men outside the Metropolitan Area. And the prayer for injunction—important because it is, except for limited additions hereinafter noted, the injunction ultimately granted—was against the inducing of persons not to work upon plaintiffs' products, with no direct prohibition of conspiring with non-union groups and indeed no reference to such groups unless possibly under the vague term "confederates." Significantly, no non-union co-conspirator was joined as a party defendant and none has since been added. The expanded amended complaint of 1937 does set forth at considerable length allegations of contracts with the electrical contractors who, however, were said "to have been and now are, forced, compelled and coerced by Local 3 to enter into" these contracts for the conduct of their business in the Metropolitan Area and restricting their choice as to the manufacturers from whom they would make their purchases of electrical equipment. And the requested form of injunction remained as in the complaint. The master's opinion stressed the union's economic power, which had not merely obtained higher wages and shorter hours of labor, but had brought submission and then complaisant and active participation from the local employers. The voluminous findings filed in 1942 make much more of the conspiracy, or conspiracies; and several conclusory findings allege an intent to give the local manufacturers and contractors power to control the market and the market price. The injunction as granted, however, accepts, with slight and unimportant changes of wording, the original eight subparagraphs as prayed for in the complaint, and merely adds two more: a 9th against making, carrying out,

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or seeking to secure the observance "of agreements or understandings with contractors, manufacturers, or others, restraining, hindering or preventing" the purchase or use of plaintiffs' electrical equipment on the ground that it was not made in New York City or worked on by members of Local 3 or was in competition with equipment made by manufacturers employing members of Local 3; and a 10th against "any action whatsoever" hindering the purchase or use of plaintiffs' equipment on the same grounds as stated in the 9th. The broad scope of the injunction is such as to reach peaceful attempts by the defendants—among whom are included the individual officers of the union—to induce any person (thus even a union member) not to deal with plaintiffs, while it is most doubtful if the unnamed "confederates" are reached at all. Cf. Federal Rule 65 (d), *supra*.

Nevertheless, on any judicious view of the case, we do not believe the motive or intent of defendants can be at all in doubt; and we are left only to appraise its legal validity and effect. That the union and its officers were acting wantonly, corruptly, or even benevolently for the mere benefit of their copartners, and were not at all times acting for what they conceived to be the self-interest of the union and its members, is nowhere asserted, but is negatived by the general import of all the findings and explicitly by several, of which Finding 361 is typical. That finding, after stating that the defendants and those acting in concert with them were "in no way concerned with the working conditions, rates of wages or union affiliations of the employees in plaintiffs' factories outside the Metropolitan Area," continues: "The ban on the plaintiffs' products is and has been imposed and maintained by the aforesaid combination of the defendants, the local union contractors and the local union manufacturers, solely because the plaintiffs do not, or because of their geographical location outside the Metropolitan Area cannot, employ members of Local No. 3 in

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their factories outside the Metropolitan Area." In other words it was a make-work campaign for the benefit of union members.

For half a century and against strong popular, political, and legislative pressure, the courts struggled to resolve the anomaly of applying a statute forbidding combinations in restraint of trade to a social organism which must depend on united effort for its existence and upon at least certain restraints of trade as a reason for its being. Finally, at long length the Supreme Court boldly announced what must be taken as an abandonment of the attempt. The case which most significantly marks this change is *United States v. Hutcheson*, 312 U. S. 219, 231, 236, where the majority of the Court through Mr. Justice Frankfurter made clear that the Sherman, Clayton, and Norris-LaGuardia Acts must be read together as "interlacing statutes" presenting "a harmonizing text of outlawry of labor conduct," and that "the Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized trade union activities as redefined by the later Act."

4. This is one of the most discussed cases of recent times; compare, *inter alia*, Gregory, *The New Sherman-Clayton-Norris-LaGuardia Act*, 8 U. Chi. L. Rev. 503; Steffen, *Labor Activities in Restraint of Trade: The Hutcheson Case*, 36 Ill. L. Rev. 1; Nathanson and Wirtz, *The Hutcheson Case*, 36 Ill. L. Rev. 41; Blum, *Labor Provisions of the Clayton Act Revived*, 29 Geo. L. J. 779; Lippert, *Jurisdictional Dispute Between Labor Unions in Restraint of Trade—Immunity from Prosecution Under Anti-Trust Laws*, 4 U. Det. L. J. 209; Carey, *The Aper and Hutcheson Cases*, 25 Minn. L. Rev. 915; Teller, *Federal Intervention in Labor Disputes and Collective Bargaining—the Hutcheson Case*, 40 Mich. L. Rev. 24; Stockham, *The Hutcheson Case*, 26 Wash. U. L. Q. 375; Notes, 27 Va. L. Rev. 835; 41 Col. L. Rev. 532; 9 Geo. Wash. L. Rev. 724; 3 La. L. Rev. 646; 89 U. Pa. L. Rev. 827; 10 Fordham L. Rev. 268; 26 Iowa L. Rev. 862; 54 Harv. L. Rev. 887.

Among helpful discussions of the general problem may be cited Gregory, *The Sherman Act v. Labor*, 8 U. Chi. L. Rev. 222; Cavers, *Labor v. The Sherman Act*, 8 U. Chi. L. Rev. 246; Schmidt, *Application of the Anti-Trust Laws to Labor—A New Era*, 19 Tex. L. Rev. 250; Newman, *Restraint of Trade: Labor Disputes and the Sherman Act*, 2 Calif. L. Rev. 399; Tunks, *A New Federal Charter for Trade Unionism*, 41 Col. L. Rev. 969; Gregory, *Union Peacetime Restraints in Collective Bargaining*, 10 U. Chi. L. Rev. 127; Comment, *Labor Activities under the Sherman Act*, 35 Ill. L. Rev. 424.

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Hence the test of lawful union activities in the famous Section 20 of the Clayton Act, 29 U. S. C. A. § 52—which had been held merely declaratory of existing law in decisions such as *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 16 A. L. R. 196—is now to be given full effect, contrary to the holdings of the earlier cases, as stating permissible union activities in any “labor dispute” within the broad definition of that term of the Norris-LaGuardia Act, 29 U. S. C. A. § 113, as applied in cases such as *Milk Wagon Drivers’ Union v. Lake Valley Farm Products, Inc.*, 311 U. S. 91, and *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552. Hereafter, following the terms of these Acts, it can no longer be considered illegal for any person or persons, singly or in concert, to cease or refuse to perform any work or labor or peacefully to persuade any person to work or abstain from working, or to cease to patronize any party to such a dispute, or to recommend, advise, or persuade others by peaceful and lawful means so to do. 29 U. S. C. A. §§ 52, 104. And a labor dispute includes, *inter alia*, “any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee”, and a case grows out of a labor dispute when it involves persons engaged “in the same industry, trade, craft, or occupation; or have direct or indirect interests therein,” whether it is between employers and employees, or employers and employers, or employees and employees, or associations of each, or when it involves “any conflicting or competing interests” of persons “participating or interested” in the dispute. 29 U. S. C. A. § 113.

That the Court is now settled in its present view of the inapplicability of the Sherman Act even to labor controversies whose most injurious effects may be to others than the immediate parties is made clear by later important and unanimous decisions. The *Hutcheson* case itself immunized

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against prosecution under the Act a strike and boycott against a brewery company arising out of a jurisdictional dispute between two unions as to building construction work being done for it and for its adjoining tenant. Shortly thereafter the Court affirmed dismissals of other indictments, in *per curiam* opinions which merely cited the *Hutcheson* case. *U. S. v. Building & Construction Trades Council*, 313 U. S. 539; *U. S. v. United Brotherhood of Carpenters & Joiners*, 313 U. S. 539; *U. S. v. International Hod Carriers, etc., Council*, 313 U. S. 539, affirming *U. S. v. Carrozzo*, D. C. N. D. Ill., 37 F. Supp. 191. The latter case is particularly instructive because, as the opinion below shows, it involved a charge of conspiracy as against unions and their members to prevent the sale and use in the Chicago area of labor-saving machinery (truck mixers) or in the alternative to force the employment of the same number of workmen as before the use of the machinery. Further, the defendants were charged with having obtained "working agreements" with the Chicago contractors to this effect. Finally in the controlling case of *U. S. v. American Federation of Musicians*, 318 U. S. 741, the Court affirmed the dismissal in D. C. N. D. Ill., 47 F. Supp. 304, 305, of an action for an injunction brought by the United States against a nation-wide boycott by musicians and their union of recorded music supplanting their services; it did this merely on citation of the *Norris-LaGuardia Act* and the *New Negro Alliance* and *Milk Wagon Drivers' Union* cases, *supra*. In this case the union comprised "virtually all musicians in the nation who made music for hire"; and it was charged not only with conspiring to prevent the use of "canned music" by radio, broadcasting stations, in juke boxes in various establishments, and in the home, but also with accomplishing its purposes through coercion exercised on the record-making companies by notifying them that the union members would

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not make musical records. Of course, the union was not interested in the working conditions of the employees of the record manufacturers or the radio stations, but was interested in providing work for its members; and it enforced its boycott in a *national*, not in a purely local, market.⁵

These cases, as well as earlier one,⁶ are too closely similar to the case at bar, indeed going beyond it in some aspects, to permit the broad adjudication of illegality here, and the injunction based upon it to stand. That this is a labor dispute within the statutory definition follows from the precedents. If a dispute as to the conditions of work between a union and employers still remains a labor dispute as to third persons interested therein or injured thereby, its complexion is hardly changed by a settlement—possibly only an armistice, not a treaty—between the original parties which hurts the third persons more than did the original controversy. *United States v. International Hod Carriers*; etc., *Council, supra*; *Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc., supra*,

5. In *Apex Hosiery Co. v. Leader*, 310 U.S. 469, in denying recovery by a hosiery company for stoppage of its business by a sitdown strike, accompanied by violence, by non-employees of the company, Mr. Justice Stone, speaking for a majority of the Court, held that there must be a cessation of interstate traffic on a substantial scale, and that the purpose or intent of a union was not a decisive factor to a violation of the Act. This test of substantiality of the interruption of interstate commerce was not accepted as ultimately decisive, at least with respect to statutorily permitted labor activities, by the majority in the *Hutcheson* case, though Justice Stone still relied on it as the ground of his concurring opinion. Finally the *Musicians* case by the unanimous Court settled that an effective boycott on even a nationwide scale is not alone adequate.

6. Refusing to interfere, e.g., with picketing by an organization for the advancement of the negro of a grocery discriminating against the employment of negroes; *New Negro Alliance v. Sanitary Grocery Co., supra*, or with picketing by a milk wagon drivers' union of retail stores, selling milk, to reduce or eliminate milk deliveries from the dairies to such stores—of course to the direct benefit of the union members' employees, as well as the members themselves—*Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc., supra*, or with a sitdown strike by non-employees, *Apex Hosiery Co. v. Leader, supra*, note 5.

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311 U. S. at page 99.¹ The decision in *Columbia River Packers' Ass'n v. Hinton*, 315 U. S. 143, 147, strongly relied on by the plaintiffs and the court below, is not to the contrary, for there the controversy was between a processor of fish on the one hand, and independent fishermen and their association, on the other. The Court emphasized that the defendants' desire was "to continue to operate as independent businessmen"; the dispute related "solely to the sale of fish," and hence was unlike those involved in earlier cases, where the employer-employee relationship was "the matrix of the controversy." The fact that some of the fishermen had a small number of employees who were also members of their association did not alter the essential nature of the controversy. So in *American Medical Ass'n v. United States*, 317 U. S. 519, 533-536, the professional association was interested solely in preventing the operation of a business conducted in corporate form by Group Health Association, Inc., not in the terms and conditions upon which the latter employed its physicians. Here, however, the defendant union is admittedly a bona fide labor organization; and the "conditions" of the employment of its members by the local manufacturers and contractors are "the matrix of the controversy," indeed the very thing which causes the plaintiffs their injuries.²

7. In the latter case the Court said that the controversy did not cease to be a labor dispute because the plaintiff dairies' employees became organized, for this merely transformed defendants' activities into a conflict which included a controversy between two unions—an aspect present in the case at bar, though not immediately before the court in this action. See note 1, *supra*.

8. Cf. *Donnelly Garment Co. v. Dubinsky*, D. C. W. D. Mo., 55 F. Supp. 587, 601; also 42 Col. L. Rev. 702, 1067; 56 Harv. L. Rev. 479; 10 U. Chi. L. Rev. 216. The more limited rule announced under the state statute in *Opera on Tour v. Weber*, 285 N. Y. 348, 136 A. L. R. 267, certiorari denied *Weber v. Opera on Tour*, 314 U. S. 716, is ably criticized by Lehman, C. J., for the minority; and see also, *inter alia*, 41 Col. L. Rev. 1266, 42 Col. L. Rev. 51, 66-68, 51 Yale L. J. 144, 27 Corn. L. Q. 115, 39 Mich. L. Rev. 665 and 28 Va. L. Rev. 727.

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It seems clear, therefore, that the union members may refuse to work upon the plaintiffs' products; and, in view of the position of economic power which the union has now attained, that privilege is for practical purposes an almost complete shield for the defendants' acts which are most injurious to the plaintiffs. For all the other acts charged against the defendants may be barred; and yet if the union can hold its ranks together and keep its members from working upon plaintiffs' products, the Metropolitan Area will still be closed to them. The injunction does not purport to interfere with that privilege directly, though it comes close to doing so in the provisions, clearly too broad, which forbid the union officers from inducing anyone, even members, from thus doing what it and they may legally do. Moreover, peaceful persuasion, even of others, is clearly within the now applicable statutory terms. Indeed, the injunction is so far contrary to the statute that its mandate might well have been stated in the converse of the terms of the Clayton Act, § 20, viz., as restraining Local 3 and its officers "from terminating any relation of employment, or from ceasing to perform any work or labor . . . or from ceasing to patronize . . . any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do." 29 U. S. C. A. § 52, *supra*. And the vague scope of the declaratory judgment is even more indefinitely inclusive, in terms reaching all the activities of the defendants set forth in the findings.

If the present judgment and injunction must therefore fall, should they be refrained to reach only the asserted conspiracies with the local manufacturers and contractors? Such a result would obviously call for the most discriminating draftsmanship, for the injunction, to make quite clear what was still permissible, to avoid all difficulties as to the extent of its reach in view of the failure to include the co-conspirators, and to define the objectionable union

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purpose and intent which, rather than the consequences of defendants' acts, now would become crucial, though proof adequate to justify enforcement by way of contempt proceedings would be hard to secure. But more important is the fact that such an injunction, though on its face so seemingly far-reaching, would after all be of limited effect. For under it, compliance to the extent of public dissolution of all the agreements would satisfy the legal formalities; but still if the union continued its boycott of plaintiffs' products, conditions would remain substantially as before. Such an inconclusive result can hardly fail to add to the bitterness between the parties; one can easily foresee the almost impossible position of the court in attempting fairly to pass upon the proceedings in contempt which would inevitably follow. We do not think the precedents are correctly interpreted to require an effort so vain and useless.

The doctrine that a union necessarily forfeits the benefits of its statutory exemption from the antitrust laws when it combines with non-labor groups, which has been asserted by some authorities, is rested upon a reading in the most extensive form possible of a limitation noted by Mr. Justice Frankfurter to the doctrine stated in the *Hutcheson* case, as follows: "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means." And then to the word "groups" he dropped a footnote, which reads: "*Cf. United States v. Brims*, 272 U. S. 549, involving a conspiracy of mill work manufacturers, building contractors and union carpenters." 312 U. S. at page 232. The *Brims* case affirmed the conviction of union members in the Chicago area who refused to work on non-union out-of-state mill work, with the result that an exclusive market

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was established for the local manufacturers; and the argument is that by these words of the Court the *Brims* case is still left in unabated force.⁹

Now it is doubtful if Justice Frankfurter intended to define precisely just the extent of the limitation the Court had in mind. There was no necessity for him to do so at that time; and the matter had ramifications which the Court would not be likely to dispose of cavalierly. Hence the excepting sentence doubtless should not be read with exacting literalness; but in view of the use which has been made of it, we should note that it is not a positive affirmation, but a statement of only restricted reach. If its converse is to be accepted as an affirmative, it is not that combinations with non-labor groups are taboo, but only that when a union no longer acts in its self-interest and does so combine, then the licit and the illicit may have to be determined by a judgment as to the rightness or wrongness, etc., of the union end or purpose. Such a truism would seem still of un doubted validity; for the *Hutcheson* case did not purport to remove all rulings whatsoever upon labor activities. Thus, acts of violence are not protected by the statutes; nor, in any sound view, should labor union activities be usable merely as a blind or cloak for illegality. Thus, in *Albrecht v. Kinsella*, 7 Cir., 119 F. 2d 1003, 1004, 1005, the Court said: "Labor unions as such were here involved only in name—and the name of labor was being used as a shield or blind behind which a venal group was hiding and at the same time levying tribute upon industry.

9. The *Apex* case, *supra*, note 5, 310 U. S. at page 501, also cites the *Brims* case, but in like reserved language—"a case of a labor organization being used by combinations of those engaged in an industry as the means or instrument for suppressing competition or fixing prices." Early comments after the *Hutcheson* case, *supra*, note 4, were inclined to view the exception broadly; and there were some cases in accord, e. g., *United States v. Central Supply Ass'n*, D. C. Ohio, 40 F. Supp. 964; *United States v. Associated Plumbing & Heating Merchants*, D. C. Wash., 38 F. Supp. 769. Later comment and decision have been more restrained, cf. note 10, *infra*.

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business, and home builders. . . . When officials of the labor union step outside their union labor fields and act as highway men, levying tribute on those who wish to build homes or other buildings, acting for their individual gain; the immunity granted to labor unions under the amendment to the Sherman Act does not extend to them." And the court went on to say: "The test is whether the activity complained of is one promotive of, and within the scope of, the legitimate objects of a labor union or whether the union is being misused by those holding official position or positions of trust therein, who, conspiring for their private and their personal profit, are using the union name to obtain immunity from Sherman Act prosecutions and at the same time shield their misconduct behind an organization whose fair name and activities are likely to mislead a court or jury as well as the public."¹⁰

10. See also *United States v. Bay Area Painters & Dec. Joint Com.*, D. C. N. D. Cal., 49 F. Supp. 733, 738, saying "it would seem beyond belief" that Congress, having carefully protected the machinery of collective bargaining, would then after the bargain has been made withdraw that protection and leave the parties liable for prosecution for criminal conspiracy, and distinguishing *United States v. Lumber Products Ass'n*, D. C. N. D. Cal., 42 F. Supp. 910, affirmed in part, 9 Cir., Aug. 23, 1944, — F. 2d —; and cf. *United States v. B. Goedde & Co.*, D. C. Ill., 40 F. Supp. 523, and comments in 9 U. Chi. L. Rev. 342 and 16 U. Cin. L. Rev. 51, and the earlier case of *Local 167 v. United States*, 291 U. S. 293. See also discriminating discussion in Gregory, *op. cit. supra*, note 4, 10 U. Chi. L. Rev. at pages 187-190; Tunks, *op. cit. supra*, note 4, 41 Col. L. Rev. at pages 1011-1012; 42 Col. L. Rev. 1067, 1070-1071; 40 Mich. L. Rev. 1244; cf. Merritt, *Two Federal Legislatures*, 30 A. B. A. J. 371, 380. Compare also the suggestion in Boudin, *Organized Labor and the Clayton Act*, 29 Va. L. Rev. 272, 395, that, when the union is used for the mere benefit of non-labor groups, then the union officers, and not the union, should be liable.

The *Lumber Products* case, *supra*, was an extensive prosecution of various trade associations, corporations, and individuals comprising the "Manufacturer Group," and various trade councils, unions, international and local, and officers and agents comprising the "Union Group," who were charged with having entered into a written agreement, following a demand in 1936 for a wage increase, to shut out from the San Francisco area all millwork and patterned lumber produced outside the area, although at least 80% had previously come from without the state, chiefly from Washington and Oregon. Indictments having been sustained, the "Manufacturer Group" pleaded *nolo contendere* and the union groups were found guilty by a jury

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It seems to us that this is the distinction the Supreme Court had in mind in its reference to the *Brims* case, and that the latter cannot now be held as broadly applicable as perhaps it was originally. As one commentator puts it, the *Brims* case "should be relegated to its position as one of a line of cases uncritically condemning refusal to work on non-union products delivered in interstate commerce"—a position no longer tenable in the form stated—and that "when the union is permitted to act alone, an agreement with employers should not automatically add the condemnable virus." Tunks, *A New Federal Charter for Trade Unionism*, 41 Col. L. Rev. 969, 1012.¹¹ This distinction seems to us the logical deduction to be made from the present state of Supreme Court decisions, and to be consistent with the statutes upon which the Court relies, and which do not in terms exclude business-labor combinations, but, as we have seen, do extend the inclusive labor dispute to include employment interests not themselves primarily engaged in a controversy as to terms and conditions of employment. On this basis it would follow that here the activities which cannot be forbidden to Local 3 acting by itself are not to be interdicted because other groups join with them to the same end.

after trial. Upon appeal the convictions were sustained (except as to three individuals), the court holding the agreement one not to secure any legitimate advance of the laborer's interest, but to extort a "capital levy on the home builder" and a "monopoly price tribute from the consumer" and, relying upon the *Brims* case, to the effect that labor and the employer may not agree to give the latter a monopoly price-fixing contract and thereafter "split the take." Hence the history, the scope, and the purpose of the fixed written agreement, as stated by the court—all tend to differentiate that case from the present (compare the *not pressing* of indictments, as stated in note 1, *supra*), while the present issue of framing an injunction of fixed regulation of future union activities differs markedly from that of finding evidence to sustain a jury's verdict of guilt. Nevertheless, with deference one may question the present extent of the *Brims* doctrine as here restated, or the view that a labor dispute loses its character as such as soon as a collective bargain is made. Compare the views of the same district judge in the *Bay Area Painters* case, *supra*.

11. For like comments, see note 10, *supra*.

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That the present state of the authorities is such as to leave the harshness of the economic struggle to bear with unusual weight upon the consuming public has been the conclusion of commentators who have urged legislative action to check some of the abuses of power which exist.¹² But the making of ground rules for business competition is difficult in any case, as shown by current discussions of such matters as patent monopolies and the issue of compulsory licensing to prevent the use of patents to retard new inventions; and the problems are immeasurably increased with the addition of the explosive elements of attempted regulation of organized labor. Indeed, advocates of legislative reform seem not agreed as to whether it should take the course of external controls of conduct towards third persons or internal regulation of union affairs. The determination of such questions of policy is, of course, no proper function of the courts; we mention the matter to indicate that we are not unaware of the disturbing consequences to the parties involved of judicial non-interference which, however, in the light of experience seems likely to be less costly to stable social institutions than judicial attempts to resolve these problems without the aid of, if not contrary to, legislative direction.

Judgment reversed and action dismissed.

12. As in Gregory, *op. cit. supra*, note 4, 10 U. Chi. L. Rev. 177; Teller, *op. cit. supra*, note 4; 9 Geo. Wash. L. Rev. 948-961; 41 Col. L. Rev. 529, 532; 49 Yale L. J. 518, 534; and the series of Ross Prize Essays in 28 A. B. A. J. 385, 471, 531, 594. But cf. Tunks, *op. cit. supra*, note 4; Shulman, *Labor and the Anti-Trust Laws*, 34 Ill. L. Rev. 769.

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SWAN, *Circuit Judge*, dissenting:

I do not read the Supreme Court cases as requiring us to hold that none of the conduct of the appellants, as found by the special master and the district court, can be deemed a violation of the anti-trust laws. The members of a labor union are privileged to agree among themselves upon a boycott, although the effect of it may be to restrain interstate commerce, when the purpose of their boycott is to make work for themselves, or improve working conditions or strengthen their union as against a competing union; but I do not think it has yet been held that they may agree with their employers to enforce a boycott for the very purpose of restraining commerce and increasing the price of articles manufactured or dealt in by their employers within a local market area. As I read the findings of fact the case at bar falls within the latter classification. Among the findings supporting this view the following may be quoted:

"353. The combination and conspiracy hereinbefore described was intended to and did give the local union manufacturers power to control the market price of their products as a result of their monopoly and was intended to and did give the union contractors exclusive purchasing rights to all electrical equipment for installation and contracts involving larger sums of money wherewith to add to their profits."

"359. The purpose of the defendants and those participating with them, in conducting the boycott is, in so far as is practicable, to exclude from the New York City market all electrical equipment unless it is manufactured or built by members of Local No. 3, employed by either local union manufacturers in the

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factory or by local union contractors on the job where the equipment is to be installed."

"366. All the acts of the defendants and those acting in concert with them were calculated and intended to prevent and destroy all interstate commerce in electrical equipment of such kinds as can be and are manufactured by local union manufacturers or built on the job by local union contractors in order thereby to secure a monopoly for the members of Local No. 3 and for their employers, the union electrical contractors and the union electrical manufacturers, of the work of manufacturing in whole or in part such types of electrical equipment to be used in the City of New York."

"368. A desire or intention by the conspirators to bring about any modification of the standards or terms of wages, hours, or working conditions, or employment relations maintained by the plaintiffs, or any of them, in any of their factories outside the Metropolitan Area, did not in any way motivate the conspirators in boycotting the plaintiffs' products."

In my opinion the facts found by the trial court make applicable the principle of *United States v. Brims*, 272 U. S. 549 involving a conspiracy of mill work manufacturers, building contractors and a carpenters' union. Neither the Clayton Act nor the Norris-LaGuardia Act has rendered that case obsolete, as recent opinions of the Supreme Court plainly show. See *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 501; *United States v. Hutcheson*, 312 U. S. 219, 232. The eighth circuit has just applied the rule of *United States v. Brims* to facts very similar to those of the case at bar. *Lumber Products Assn. v. United States*, decided August 23, 1944. I think that we should likewise apply it. Until the contrary shall be au-

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thoritatively determined, I am unwilling to believe that the congressional legislation exempting labor unions from injunctions was intended to go so far as to permit employers and employees to combine to do what neither the City of New York by municipal ordinance nor the State of New York by legislative fiat could lawfully do, namely, exclude manufactured articles from the local market merely because they were manufactured outside the state. I agree with my colleagues that the injunction was granted in term too broad, but I cannot agree that no injunction whatever is permissible or that the prayer for a declaratory judgment should be denied. I therefore dissent from dismissal of the complaint.

IN THE

Supreme Court of the United States

October Term, 1944

**UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA**

Petitioner

against

UNITED STATES OF AMERICA

Respondent

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

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POINT II—But irrespective of whether the indictment states an offense, the conviction of this petitioner cannot stand.

The basic position of the Circuit Court of Appeals that the agreement settling the labor dispute "split the take" by giving "the employer a monopoly price raising contract", was not the issue submitted to the jury.

The Circuit Court's further position that the agreements of 1936 and 1938 terminated the labor dispute and therefore terminated the labor immunities, rests on principles which overturn an unchallenged body of judicial authority, nullifies much of the Clayton Act, the Wagner Act and the Norris-LaGuardia Act, and begs the fundamental questions of fact and of law in this case.

On the other hand, the Trial Court erroneously instructed the jury that the agreements constituted a combination between a labor and a non-labor group and hence

had no immunity from the Clayton Act or the Norris-LaGuardia Act; and that as matter of law they constituted a criminal offense against Section 1 of the Sherman Act if they "intended to or did restrict" interstate commerce.

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IN THE
Supreme Court of the United States

October Term, 1944

**UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA,**

Petitioner,

against.

UNITED STATES OF AMERICA,

Respondent.

**APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**BRIEF FOR THE PETITIONER,
UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA**

This Court has granted a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, dated and filed August 23, 1944 (1697), pursuant to its opinion rendered August 23, 1944, affirming the judgment of the United States District Court

for the Northern District of California, Southern Division (1366-8), entered upon a verdict of guilty (1365) and based upon an indictment (14-47) charging this petitioner, among others, with violation of Section 1 of the Sherman Anti-Trust Act (27).

The petitioner's application to the United States Circuit Court of Appeals for a rehearing was denied on October 14, 1944 (1698).

A copy of the opinion of the Circuit Court of Appeals begins on page 1674 of the record. It is officially reported in 144 Fed. (2d) 546.

The District Court did not render an opinion.

Statement of Jurisdiction

The jurisdiction of this Honorable Court is under Section 240(a) of the Judicial Code, 28 U.S.C. Ann., sec. 347(a).

Federal Statutes involved are the Sherman Act, sec. 1, 15 U.S.C. Ann. 1, the Clayton Act, 29 U.S.C. Ann. 52, the Wagner Act, 29 U.S.C. Ann. 151, and the Norris-LaGuardia Act, 29 U.S.C. Ann. 102 *et seq.*

Pertinent provisions of these statutes are quoted at pages 34-36, *post*, and at other places in the course of the ensuing argument. They are also quoted in the Appendix (p. 75) of the brief for the Bay Counties District Council *et al.* (No. 667).

Questions of Law Involved

1. Does the first count in the indictment state facts constituting a violation by this petitioner of Section 1 of the Sherman Act?

2. Should the motions of this petitioner, made at the close of the trial for the dismissal of the indictment or a directed verdict of acquittal as to it, have been granted?

3. Should the conviction of this petitioner be reversed for prejudicial errors of law made during the trial, in the charge to the jury and in the refusal of this petitioner's requests to change?

4. Should this petitioner's motions in arrest of judgment, to set aside the verdict and for a new trial, have been granted?

Concise Statement of the Case

The Indictment

(1) The indictment, in the first instance, consisted of two counts; but, upon the Attorney General's motion at the outset of the trial, the second count, charging a conspiracy to create a monopoly, was dismissed (111, 139).

The indictment charges that continuously since September 1, 1936, the defendants (composed of labor groups and manufacturing groups) conspired against Section 1 of the Sherman Act for the following "general purpose" and "object" (26-28):

1. To exclude manufacturers of millwork and patterned lumber located in states other than California from selling this material in, and from shipping it into, the San Francisco Bay Area.

2. To prevent lumber yards and jobbers in the Area from purchasing and bringing into the Area millwork and patterned lumber manufactured in states other than California.

3. To raise, fix, stabilize and maintain prices for millwork and patterned lumber shipped into California for sale in the Area.

(2) The indictment *does not charge* any extortion, racketeering, corruption, disorderly conduct, violence or threats thereof.

It *does not charge* that the union defendants did not aim at better wages and labor conditions.

(3) The indictment concedes the fact of "a labor dispute."

It expressly alleges that the defendant unions had made "wage scale demands" upon the defendant manufacturers (28); that the unions had backed these demands by picketing (30, 38); that the defendant manufacturers "agreed to accede and did accede" to these demands; and that manufacturers of millwork and patterned lumber outside California "have a lower wage scale than the millwork and patterned lumber manufacturers in the San Francisco Bay Area" (8).

The indictment itself concedes that the "wage scale demands of defendant union" and the accession of the defendant manufacturers thereto found expression in a written agreement, dated September 21, 1936, concerning which the indictment alleges in Par. 28 (b) (28):

"(b) Pursuant to said understanding set out in paragraph 28, subparagraph (a), the defendants, on or about the 21st day of September, 1936, entered into a contract and agreement covering the wages to be paid to the members of defendant unions, in which said agreement it was further agreed that: '... no material will be purchased from and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement' (except certain named items).

"(c) The defendants have continued, in full force and effect, by subsequent agreements and understandings, the provisions of said agreement described in paragraph 28, subparagraph (b) with reference to the restriction on millwork and patterned lumber manufactured at lower wage rates than those then in force in the San Francisco Bay Area."

The indictment further alleges that the activity of the defendant unions was local to the Bay Area and resulted in a local wage scale agreement with the defendant manufacturers local to the Bay Area (27-32, 36). The defendant unions were also all localized in the Bay Area, with the exception of this petitioner which, in the indictment, is joined on the principle of imputation, to wit: "as advisor to, supervisor of, and governing body for carpenters' local unions and carpenters' district and state councils in the United States of America" (18).

There are the usual conclusory characterizations.

In other words, the indictment sought to invoke the criminal law in order to equalize wages in this industry by bringing them down to the lowest existing standard, whereas the organized labor and the agreement attacked in the indictment sought to equalize wages by bringing them up to the highest existing standard.

(4) On October 1, 1940, this petitioner and the other labor defendants demurred for insufficiency (42).

The demurrer was overruled on December 2, 1940 (103). Exception was taken (104) and constitutes an Assignment of Error (1592.3).

During the trial, this petitioner made the following motions:

1. A motion at the opening of the trial to dismiss the indictment for insufficiency (144).

2. A motion at the close of the prosecution's case to dismiss the indictment or for a directed verdict, because of insufficiency of evidence (596-7).

3. A like motion at the close of the whole case (1124-5).

4. Motions after verdict for a new trial and in arrest of judgment (1209, 1213, 1217).

These motions were all denied. Exceptions were taken and Assignments of Error filed (141, 598, 1125, 1221, 1393-5, 1606).

The Evidence

The testimony tells a consistent and undisputed story of a continuous labor struggle and dispute in the Bay Area for several decades, including the period of the alleged conspiracy. This case has grown out of that prolonged dispute.

(1) In 1921 the local employers had forced on the local employees an open shop, and they kept it open for fourteen years (829). Not until June 27, 1935, and after a two weeks strike, were the local unions again able to secure a closed shop agreement; but that agreement was terminable on sixty days notice by either side (754, 757). It was not signed by all the manufacturers in the Bay Area, and some non-union shops continued in operation (651, 758, 776, 831).

In consequence, in the spring of 1936 the controversy intensified itself again. An arbitration agreement was made and later revoked (605-10, 758-9, 763). On September 21, 1936, another closed shop agreement, stating a wage scale, was signed, but was again terminable on sixty days notice by either side (279-287). This agreement is the one referred to in the indictment (28). It soon broke down (834) and was followed by a new arbitration which resulted in a dispute as to the parties bound thereby (621, 772-3, 835-6). This dispute was ultimately compromised by the agreement dated October 17, 1938, which fixed a new and somewhat higher wage scale; but either side could terminate it after January 1, 1939 "upon notice" (290, 568, 629-630, 671, 778-4).

Obviously, these short term, revocable agreements were merely unstable *truces* in a continuous labor struggle by the local unions on three fronts, to wit: the front against all the employers in the Bay Area, the front against such of those employers as refused the concessions by the others, and the front against sub-standard wages, non-

union labor and non-union goods in and out of the Bay Area. The long-range view of the unions was to promote wages and unionization throughout the entire industry everywhere.

(2) The agreement of 1936 (Ex. 132, p. 280), which is the one mentioned in the indictment (28), contained the following paragraph (283):

"16. In the interest of standardization of rates of wages and working conditions, it is agreed that no material will be purchased from, and no work will be done on any material or articles that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase of and the working of the following products is excepted: (Then follows a list of certain excepted articles.)

Nothing herein is to be interpreted as preventing the entire production and sale of any articles in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws."

A substantially similar provision, with similar exceptions and reservations, was in the 1938 contract (Ex. 132, pp. 288-290).

Neither agreement classified the unexcepted articles according to geographical origin but only according to wage scale and working conditions, *no matter where their origin*. They had the same application to articles whether made in the Bay Area or made anywhere else.

(3) The evidence shows without conflict—at least the jury could easily have so found, if the question had been submitted to them—that the above-quoted clause as to

conformity "to the rates of wage and working conditions of this Agreement", was inserted at the insistence of the defendant unions; and that the list of articles exempted therefrom was added at the insistence of the employers and over the objection of the unions as a qualification of the union's demand for a completely closed shop (608-12, 648-57, 665-6, 740-1, 759-65, 792, 797-9, 802-3, 815-6, 829-33, 887-94).

Furthermore, the wage scales embodied in these written agreements were in no sense an offer from or fixed by the defendant manufacturers. They were not devised and extended as a bribe to assist in suppressing interstate commerce. On the contrary, these scales represented both in 1936 and 1938 a reluctant compromise of a bitter controversy over the subject of wages and working conditions, reached only after the disputes had been carried to the point of arbitration and the arbitration had broken down into fresh disputes as to the parties bound thereby. The ultimate wage scales as stated in each agreement were less than the unions demanded, and the ultimate exemptions were greater than the unions wished (426-7, 605-10, 620-1, 758-9, 763, 771-4, 782, 813-4, 834-9, 1018-23, 1034-5).

There is no evidence that the unions participated in the selection and fixing of prices by any of the manufacturers.

Furthermore, as shown hereafter, if there were any such issues of fact, they were not submitted to the jury.

The Rulings by the Trial Court

(1) At the trial the Court seemed to consider that these written contracts of 1936 and 1938 were *ipso facto* violations of Section 1 of the Sherman Act; and its charge to the jury was tantamount to a direction to convict:—

That charge reduced the issue of guilt or innocence on the part of the union defendants to the single question (1153):

"The sole question is whether defendants intended to *or did* restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants."

Inasmuch as any closed shop agreement barring non-union labor and goods made with non-union wages, necessarily restricts freedom of trade, this charge as to "the sole question" was tantamount to a direction to convict. The alleged issue thus charged to be exclusive was illusory as an issue of fact for the written agreements between the two groups were "an understanding" and "did" restrain the employers' freedom of trade to the extent of the terms thereof.

In the same breath, and clinching the effectualness of the charge as a direction to convict, the Trial Court ruled out as a qualification, excuse or defense on the part of the labor defendants any claim or proof that they were acting solely to protect their self-interest or their wage scale or working conditions, or to enforce their refusal to work on articles non-union made or not bearing the union label. Thus the Court charged (1152):

"Though the motive of the labor union defendants was to protect their self-interest, you *must* find the defendants, or any of them, who so combined and conspired, guilty as charged."

The Court also charged (1152):

"In this connection, I charge you that whether the millwork and patterned lumber involved in the testimony in this case was manufactured in mills whose employees were members of the United Brotherhood of Carpenters and Joiners of America or of its affiliated unions, or whether such millwork and patterned lumber bore a union label, *is not* to be considered by you."

The application of these binding instructions to the written agreements of 1936 and 1938 was both obvious and absolute. Indeed, the Trial Court made the application inescapable and positive by charging (1150):

"If you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork manufactured in states outside the State of California; such an agreement or understanding would constitute a violation of the Sherman Act as charged in the Indictment."

These instructions inevitably meant to the jury that, although under the agreements of 1936 and 1938 the test was not the geographical origin of the articles but solely the lack of union origin or union standards in their making, the Sherman Act was nevertheless violated irrespective of the purpose of the defendant unions to protect their self-interest in wages or working conditions or unionization, provided only that such agreements did in fact place some restriction on the freedom of interstate trade.

At the same time the union defendants were bound hand and foot to these mandatory instructions and rendered completely helpless by the Trial Court's refusal of all their requests for instructions on the subject of the agreements with the employer defendants, the purposes and self-interest of the labor defendants in making and acting under those agreements, the fact of "the labor dispute" and the legal consequences thereof, and the right of the union defendants to refuse to work on goods non-union made or not bearing the union label (1175-93). Exceptions and Assignments of Error were entered (1128, 1155-60, 1441, 1591, 1598-9).

(2) The written agreements of 1936 and 1938 were closed shop agreements,—the shops of the signatory manufacturers being thereby closed against both non-union labor and non-union materials made *anywhere*.

These agreements did not bar from the shops articles because they were made outside the Bay Area or the State. The only articles barred were those made under less favorable wage scales or working conditions. Such articles would be equally barred even if made in the Bay Area.

Such a closed shop has never before been held to be a violation of the Sherman Act,—notwithstanding that it does or may involve, as a consequence, some restraint or diminution of the freedom of trade and some effect upon costs and prices.

On the labor side, the very purpose of such an agreement is to protect or improve the scale of wages and hence the standard of living from the depressing competition of lower wages and lower standards of living, whether reflected in non-union services or in non-union goods. Such an agreement may well have some effect upon costs and prices in the area involved, either as making against a decline or as causing some increase. On the other hand, it may have the effect in the long run of improving wages and working conditions not only in the area involved but throughout the entire industry, and hence of increasing buying power and promoting trade everywhere. The American idea is that the community receives its return in the greater purchasing power and cultural standards of the workmen, and hence ultimately in a greater volume of trade.

But, under the law as charged by the Trial Court, such closed shop agreements are illegal *per se*, or at least are reduced to jury issues. A restraint of trade or a tendency to monopoly or an economic effect upon prices can always be claimed. Although the union may concededly be acting in its own interest and for its own ends, nevertheless under this charge to the jury any such interest or aim is out-

lawed by the simple argument that there was an agreement or "understanding" with a non-labor group and that this latter group also had in mind its own self-interest and a purpose to transmute its increased costs into increased prices. Obviously, such a view of the law converts every closed shop into a crime and a criminal or civil lawsuit and undermines the whole principle of the Clayton Act, the Wagner Act and the Norris-LaGuardia Act.

Nevertheless, the Circuit Court of Appeals has affirmed this charge to the jury and hence the conviction which inevitably ensued. It did so without saying a word about the charge or any of the union defendants' requests to charge.

(3) As to this petitioner (United Brotherhood of Carpenters and Joiners of America), which was made a party to the indictment by imputation of guilt (18), the Trial Court merely told the jury that in determining the guilt or innocence of a labor union, the jury was to proceed by the same test as they would apply to a corporation, to wit: "an examination of the acts of their agents" (1138); and that (1137):

"The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation."

The Trial Court made no reference to the broad autonomy of local unions under the Constitution of the Brotherhood in the matter of government, laws, trade policies and rules, strikes and other union activities (461-2).

The Trial Court also refused all our requests for instructions as to the requirements for finding guilty participation by this petitioner (1172-5), and such refusals are assigned as error (1541 *et seq.*). These requests are not mentioned in the opinion of the Circuit Court of Appeals.

In the Circuit Court of Appeals we challenged these instructions and refusals to instruct, on the following grounds:

(a) They erroneously applied to a criminal case the rule applicable in a civil case.

(b) Even in a civil case the alternative phrase was erroneous because it did not require that the act which the agent "assumed to do" must be found to fall within the scope of the "duties actually delegated to him".

(c) In a criminal case, guilt is personal and there is no such thing as guilt by mere imputation.

(d) Section 106 of the Norris-LaGuardia Act expressly exempts a labor union or organization from criminal responsibility by reason of the unlawful acts of an officer or agent "except upon clear proof of actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof."

The Rulings of the Circuit Court of Appeals

The opinion of the Circuit Court of Appeals does not discuss the Trial Court's charge to the jury or its rulings on the relevancy of evidence, or its refusal of all the petitioner's requests for instructions.

The opinion puts a certain construction on the indictment, holds that the indictment, so construed was valid, and rules that the evidence was sufficient to sustain a conviction under that construction. It also rules that since the agreements of 1936 and 1938 professed to terminate the labor dispute, such dispute and the immunities under the Clayton Act and the Norris-LaGuardia Act were irrelevant.

Specification of the Assigned Errors to be Urged

The trial was long and the rulings adverse to the petitioner were very numerous.

As a consequence, many assignments of error have been made by this petitioner (1591-1606). In the making of these assignments of error this petitioner adopted and incorporated by reference many of the assignments of error made by the other union defendants, Bay Counties District Council of Carpenters, *et al.* (1441-1591).

These assignments of error are too numerous to quote. They fall, however, into certain classes:

1. Assignments challenging the overruling of the demurrer to the indictment and the refusal of this petitioner's various motions for a dismissal of the indictment as insufficient in fact and law.
2. Assignments challenging the denial of this petitioner's motion at the trial for a dismissal or for a directed verdict of acquittal because of the insufficiency of the evidence to show a violation by it of Section 1 of the Sherman Act.
3. Assignments challenging the refusal of the court to admit certain testimony offered by or on behalf of this petitioner during the course of the trial.
4. Assignments challenging the rulings of the court in striking out certain testimony which had been adduced by or on behalf of the petitioner.
5. Assignments challenging various instructions which were given by the trial court to the jury and which are quoted or specified at appropriate places in this brief.

6. Assignments challenging the refusal of the court to give to the jury certain instructions requested by the petitioner.
7. Assignments challenging the denial of the petitioner's motion for a new trial and the denial of its motion in arrest of judgment.

Many of the foregoing assignments of error are quoted at length, or their substance is set forth at length, in the brief for the other union petitioners, Bay Counties District Council of Carpenters, *et al*, No. 667. See pages 28 *et seq.* thereof.

Summary of the Argument

In the index to this brief the headings of the respective Points of our Argument are set forth verbatim and provide a convenient summary.

A further summary is provided in the "Concise Statement of the Case", page 3; *supra*.

POINT I

The indictment did not state facts sufficient to constitute an offense by this petitioner against Section 1 of the Sherman Act.

(1) Basic in the Circuit Court of Appeals' view of the law is its ruling that, notwithstanding that the agreements of 1936 and 1938 were mere short-term, revocable truces in a bitter and continuous labor struggle and dispute lasting for decades, the signing of those agreements had the following legal and factual consequences (1684):

(a) "The dispute is past."

(b) "The labor and non-labor groups are combined."

(c) "The Manufacturer Group and the Union Group are no longer participating in or interested in a labor dispute" as that term is used in § 5 of the Norris-LaGuardia Act."

The conclusion drawn is that labor's immunity from the Sherman Act, as conferred by the Clayton Act and the Norris-LaGuardia Act, when labor is engaged in pressing demands for better or securer wages or working conditions, ceases when those demands become embodied in an agreement. Thereupon there is "a combination"; and if the agreement restricts the employers' freedom of trade or creates greater costs which are or may be passed to the public in higher prices, the agreement is violative of Section 1 of the Sherman Act.

In other words, a labor dispute loses its character as such when a collective bargain is made.

Such an anomaly, we submit, not only subverts the whole principle, purpose and machinery of collective bargaining so carefully protected and encouraged by the Clayton Act and the Wagner Act, but it also subverts the very provision of the Norris-LaGuardia Act designed to guard against just such an anomaly, to wit, the provision in Section 104(h) which immunizes:

"Agreeing with other persons to do or not to do any of the acts heretofore specified."

Among "the acts heretofore specified" are "ceasing or refusing to perform any work or to remain in any relation of employment", and "advising or notifying any person" of an intention so to refuse.

See also Sections 102, 105 and 113 of the Norris-LaGuardia Act, quoted at pages 34-36, *post*.

(2) A directly opposite view of the basic law and of these statutes was subsequently taken on October 12, 1944, by the Circuit Court of Appeals for the Second Circuit in *Allen Bradley Co. v. Local Union No. 3*, 147 Fed. (2d) 215, where that Court reversed a decree of the District Court

of the United States for the Southern District of New York, which had enjoined activities of the defendant union as violative of Section 1 of the Sherman Act, and dismissed the action on the merits.

In its opinion the Circuit Court of Appeals for the Second Circuit discussed the decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case, and closed its discussion with these words (p. 83, *post*):

"Nevertheless, with deference one may question the present extent of the *Brims* doctrine as here restated, or the view that a labor dispute loses its character as such as soon as a collective bargain is made. Compare the views of the same district judge in the *Bay Area Painters* case; *supra*."

The *Bay Area Painters* case thus referred to (to wit: *United States v. Bay Area Painters & Dec. Joint Com.*, D. C. N. D. Cal., 49 F. Supp. 733, 738) was a decision by the same Judge who tried the present case and was rendered after the verdict in the present case.

In its opinion in this *Allen Bradley Co.* case, the Circuit Court of Appeals for the Second Circuit made note of this subsequent decision by the Trial Judge in our case, and said concerning it (p. 87, *post*):

"See also *United States v. Bay Area Painters & Dec. Joint Com.*, D. C. N. D. Cal., 49 F. Supp. 733, 738, saying 'it would seem beyond belief' that Congress, having carefully protected the machinery of collective bargaining, would then after the bargain has been made withdraw that protection and leave the parties liable for prosecution for criminal conspiracy, and distinguishing *United States v. Lumber Products Ass'n*, D. C. N. D. Cal., 42 F. Supp. 910, affirmed in part, 9 Cir., Aug. 23, 1944, ——— F. 2d ———."

Indeed, the facts in that case went much further than either the allegations or the evidence in the present case. In the *Allen Bradley* case, according to the Circuit Court's opinion therein (p. 218):

"The findings then show that 'agreements and understandings' entered into by the three groups—manufacturers, contractors, and union—gave them a complete monopoly which they used to boycott the equipment manufactured by the plaintiffs.

While the boycott as found ran the gamut of electrical equipment from highly complicated switchboards and control devices down to novelty lamp shades, the case of the modern switchboard is offered as typical. There are in New York City a number of companies manufacturing switchboards who, before these activities of Local 3, shared an open competitive market with many of plaintiffs. In return for a closed-shop agreement calling for higher wages and shorter hours for employees, however, Local 3 promised these local companies an exclusive market for switchboards within the city, so that they could name their own prices to offset increased production costs. Local 3 carried out its promise with the help of the electrical contractors. It had already won closed-shop agreements from a vast majority of the latter through a series of strikes, threatened strikes, and sympathetic strikes by other unions in the building trade, which threatened to tie up all construction work in New York City. It now secured the further terms that union members should work only on switchboards of local manufacture by union shops, and that the contractors should have the sole power to buy materials for any job, with a proviso as additional protection that only products bearing the union label would be utilized. Like the manufacturers, the contractors were not averse to the extra expense of union material and labor, when all competition was thus removed from the field."

(p. 218):

"All in all, the situation disclosed by the findings is that of an entire industry in a local area, quite dominated and closed to outsiders by a powerful union; whose members receive as a result exceedingly higher wages, shorter working hours, and improved working conditions, and whose co-partners—the local manufacturers and contractors—also gain by the greater profits achieved through the stifling of competition."

(p. 219):

"Moreover, as must be expected in cases where a local area is thus closed to outside products, the persons injured will include not only the excluded manufacturers and rival unions, but also—at least initially and very likely continuously—the consuming public, which must pay higher rates (as, indeed, it must also for raising of wages and lowering of hours of work) and does not receive the benefits of improved machinery or methods of operation. Thus it appears that general electrical work and equipment are costly in New York City, and instances are cited where equipment of plaintiffs was turned down for local equipment with union label at twice or three times the cost. Since the lowest bidder no longer gets city contracts, if it be not a union bid, the city has lost federal grants, which were premised upon acceptance of the lowest bid. An outstanding example of the consequences from this type of economic warfare to third persons is that on local manufacturer which has two price lists for its products, one for union use within the city at more than twice the price of the other for use without the jurisdiction."

(3) Of course, in the present case, the indictment is filled with conclusory characterizations and epithets; with charges of a purpose and intent to restrain interstate commerce; and with charges that such restraint and a consequent increase in costs and prices were the effects and results of the alleged conspiracy.

These stock allegations had already become standardized in the indictments in *United States v. Hutcheson*, 312 U. S. 219; *United States v. Carrozzo*, 313 U. S. 539; *United States v. Building & Construction Trades Council*, 313 U. S. 539; *United States v. International Hod Carriers*, 313 U. S. 539; and *United States v. American Federation of Musicians*, 318 U. S. 741. But in not one of those instances, did the presence of these stock generalizations and conclusions deflect this Supreme Court from dismissing the Government's pleading as insufficient.

Furthermore, in the present case these generalizations and conclusions are rendered the less competent and relevant by the specific and particularized allegations that there was a labor dispute, that "wage scale demands" were made, that elsewhere there were other manufacturers paying a lower wage scale, and that this labor dispute resulted in a written agreement with the employers wherein it was agreed that there would be closed shops in which there would not be introduced or worked any articles (other than those exempted) made by manufacturers that "do not conform to the rates of wage and working conditions of this agreement." (See Concise Statement of the Case, page 3, *supra*.)

Thus, it becomes evident that the present indictment is merely an elaborate effort by characterization and conclusion to turn an ordinary, written, closed shop agreement into the appearance of an elaborate conspiracy on the part of labor to assist employers "to raise prices by monopoly pricing" (to quote the Circuit Court of Appeals' opinion, p. 1684),—such assistance to be extended by acting as their tool to exclude from the Bay Area articles from Washington and Oregon.

But the particularized always controls the generalized, and mere conclusions must yield to the facts.

The actual written agreement quoted in the indictment (28) says nothing about any place of origin. Its restrictive test is not geographical, but a wage scale. It would be equally applicable to articles made at sub-standard wages in the Bay Area itself. It says nothing about assisting any employers to do anything. It says nothing about prices.

On its very face, this written agreement, incorporated in the indictment as its core, is, on the unions' part, an embodiment of as much of their "wage scale demands" as they were able to achieve by union pressure and collective bargaining. It was, on their part, their action and bargain in their own self-interest.

Nor does the quoted agreement say anything at all about a "monopoly", or a plan to "split the take" (1680), or about the selection or fixing of prices. Indeed, the second count in the indictment, which was the only count to charge monopoly and monopoly pricing, was withdrawn by the prosecution at the opening of the trial (111, 139).

(4) We intend to argue these considerations more elaborately in the succeeding Points of this brief. Here we can clinch the matter by quoting as follows from *Aper Hosiery Co. v. Leader*, 310 U. S. 469, 503:

"Furthermore, successful union activity, as for example consummation of a wage agreement with employers, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards. Since, in order to render a labor combination effective it must eliminate the competition from non-union made goods, see *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 209, an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act. See *Levering & G. Co. v. Morrin*, *supra*; cf. *American Foundries case*, *supra*, 209; *Widow Glass Manufacturers v. United States*, 263 U. S. 403."

POINT II

But irrespective of whether the indictment states an offense, the conviction of this petitioner cannot stand.

The basic position of the Circuit Court of Appeals that the agreement settling the labor dispute "split the take" by giving "the employer a monopoly price raising contract", was not the issue submitted to the jury.

The Circuit Court's further position that the agreements of 1936 and 1938 terminated the labor dispute and therefore terminated the labor immunities, rests on principles which overturn an unchallenged body of judicial authority, nullifies much of the Clayton Act, the Wagner Act and the Norris-LaGuardia Act, and begs the fundamental questions of fact and of law in this case.

On the other hand, the Trial Court erroneously instructed the jury that the agreements constituted a combination between a labor and a non-labor group and hence had no immunity from the Clayton Act or the Norris-LaGuardia Act; and that as matter of law they constituted a criminal offense against Section 1 of the Sherman Act if they "intended to or did restrict" interstate commerce.

The Trial Court in effect directed a verdict of guilty.

(1) The construction placed by the Circuit Court of Appeals upon Count 1 of the indictment is revealed in the following sentence of its opinion (1684):

"The situation [in the *Hutcheson* case] is strikingly different from one where the agreement between employers and unions for the exclusion of the articles from outside the State is purposed at once to raise

prices by monopoly pricing and create an increased wage by such pricing."

The opinion of the Circuit Court of Appeals constantly refers to the agreement of 1936 as one for "price control", and as giving the employer a monopoly price raising contract", with the union and the employer agreeing to "split the take" (1679, 1680, 1684).

But no such formula or issue was submitted to the jury; and, we contend, there was no evidence which would have justified the submission of any such issue to the jury.

Moreover, the charge of attempting "monopoly" had been withdrawn at the outset of the trial by the Attorney General's act in dismissing the second count of the indictment which charged an offense against Section 2 of the Sherman Act (111, 139).

Furthermore, as set forth in the Concise Statement of the Case (pp. 6-8, *supra*), these written agreements were actually mere short-term, revocable truces in a labor struggle and dispute which had been continuous in the Bay Area for decades.

The wage scales set forth in the written agreements of 1936 and 1938 were not all that the unions had demanded; and the exemptions of certain articles from the principle of the closed shop, as listed in those agreements, were not all that the employers had demanded.

Each agreement was itself a manifestation of a raging labor controversy which ultimately went to arbitration; and the arbitration became in each case a new center of controversy when certain employers claimed they were not parties thereto and would not be bound by the arbitral awards. The story is told on pages 6 to 8, *supra*, and is more fully told on pages 10 to 14 of the brief for The Bay Counties District Council *et al.* (No. 667).

The ultimate compromise in each case was a wage scale lower than that demanded by the unions, and, in the case of the 1938 agreement, lower even than the ar-

bitral award. Thus, in neither case was the ultimate wage scale arrived at in these temporary agreements in accord with the wishes and initial positions of any of the parties thereto. Each agreement merely represented a provisional and revocable equilibrium arrived at for a short term through opposing pressures. It was typical collective bargaining with complete success for neither side.

The unions were fighting to protect and, if possible, to advance, the gains which they had made in the Bay Area after twenty years of fluctuating warfare against embattled employers in that Area, against rival and hostile labor organizations there and elsewhere, and against the destructive competition of cheap unorganized labor there and elsewhere. The long-run view was that the preservation in the Bay Area of the unions' gains in wages and working conditions would help to advance the unionization, the wages and working conditions of carpenters and millmen everywhere.

There was no evidence that the unions' intent and purpose were to advance the employers' interest rather than their own. There was no evidence that their intent and purpose was to establish for the employers a monopoly or a scale of monopoly prices. There was no evidence that the unions participated in the selection or fixing of any prices at all. Any such contention would be a mere empty assumption, and contrary to the undisputed history of the agreements of 1936 and 1938.

In any event, even if there had been any such evidence, no such issues were submitted to the jury and no such findings were charged to be requisite to a conviction.

(2) The jury was at no time told that before it could convict the labor defendants it was bound to find that they "purposel at once to raise prices by monopoly pricing and create an increased wage by such pricing", or that they had agreed to "split the take".

On the contrary, the jury was expressly told that, although the raising of the price of millwork and patterned lumber in the Bay Area was *one* of the alleged "three objects" of the combination as charged in the indictment, it was not necessary, in order to convict, for them to find that price-raising was actually one of the objects; but that it would be sufficient to find any one of the other alleged "objects", to wit, restricting sales in the Bay Area by outside manufacturers, or restricting purchases in the Bay Area from outside manufacturers, not operating according to union standards. Said the Trial Court to the jury (p. 1140):

"It is not incumbent upon the Government to prove that all three of the stated objects were sought, or attained. Proof of one is sufficient."

As a result of this charge, there is now no way of knowing whether the jury found price-raising to be one of the alleged objects, as distinct from some restraint on sales or on purchases in the Bay Area. For all that appears, the jury may have found that the objective of the labor group was the maintenance of a wage scale and unionization, rather than price-raising, but that such objective would have some effect in restricting sales or purchases of non-union goods in the Bay Area.

(3). Indeed, when the Trial Court came to put to the jury the ultimate acid test of guilt or innocence on the part of the labor defendants, it did not include price-raising as a necessary objective on their part, but, on the contrary, proceeded on the predicate that an agreement between employees and employers in settlement of a labor dispute became a combination between a labor and non-labor group and derived no immunity from the fact that the labor group may have entered into it to promote their self-interest; and that, if the effect thereof was a restraint of interstate commerce, the labor defendants were criminally guilty under Section 1 of the Sherman Act.

In effect, the Trial Court charged as matter of law that a combination existed; that any motivation of self-interest on the part of the labor group was irrelevant; and that the only question was whether, by so combining, the labor group had in fact restrained the shipment in interstate commerce of millwork and patterned lumber not made according to union standards (1152-3).

Thus, the Trial Court charged (p. 1152):

"Labor unions or their members may join together in promoting their self-interest, even though their acts in so doing may result in an undue obstruction of interstate commerce. But they can do this only so long as they act in their self-interest and do not combine with non-labor groups."

The Trial Court also charged (1151-52):

"It would constitute no defense under the law, either to the employer defendants or to the labor union defendants, that the combination and conspiracy may have been arrived at as the result of a settlement of a labor dispute; and it would likewise constitute no defense under the law that any such combination and conspiracy may have been arrived at as the result of proceedings in arbitration of such a dispute."

All this amounted to instructing the jury that a labor group could with immunity act together in an obstruction—indeed, "an undue obstruction"—of interstate commerce, provided they were "promoting their self-interest" in so doing; but this immunity ended when their labor dispute ended in an agreement with the employers. From that point on, there was "a combination" between the labor and the non-labor groups; and hence, charged the Trial Court, the test of innocence or guilt from that point on was as follows (1153):

"The sole question is whether defendants intended to or did restrain the shipment of millwork and pat-

terned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants."

This, we respectfully submit, amounted to a direction to convict, since the fact of an understanding between the labor and non-labor groups was established by agreements in writing, and since those agreements promoted the self-interest of the labor group by establishing shops closed against non-union labor and non-union goods, and thereby necessarily wrought some restriction upon the employers' freedom of interstate commerce in services and goods.

(4) Hence we respectfully submit:

(a) The Circuit Court of Appeals begged the whole question by affirming on the avowed ground that it found in the evidence sufficient for a jury finding (not shown to have been made) of a purpose on the part of the labor group "at once to raise prices by monopoly pricing and create an increased wage by such pricing" (1684).

(b) The Circuit Court also erred in that there was no evidence sufficient to justify such a finding, even if it had been made.

(c) The Trial Court bound the jury to a view of the law which was different, which laid down different tests, and which was utterly erroneous and compelled a conviction.

(5) There was nothing at all in the agreements of 1936 and 1938 about prices or the increase thereof (280-3, 288-290).

The subject-matter of each agreement was a wage scale and working conditions, and the settlement of a labor dispute. The unions demanded that the employers exclude from their shops both non-union employees and articles made under a less favorable wage scale and less favorable working conditions, *no matter where made*.

Neither agreement stipulated for the exclusion of articles because made outside the Bay Area or the State of California.

The unions' immediate object was to secure and protect the ability of their own members to obtain and maintain employment at a wage scale consonant with an appropriate livelihood. Their long-view object was to raise wages throughout the entire industry *everywhere*.

Their test was not geography or state lines or the identity or location of the manufacturer, but solely union standards.

To quote again Par. 16 of the agreement of September 21, 1936 (U. S. Ex. 132, pp. 282-8):

"16. In the interests of standardization of rates of wages and working conditions, it is agreed that no material will be purchased from, and no work will be done on any material or articles that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase of and the working of the following products is excepted:"

Not a word is said about prices or price control or the creation of a monopoly or a division of "a take". The employers were free to compete among themselves or with others, and to introduce into their shops material made anywhere in the United States provided it was made under rates of wages and working conditions as good or better than that in the agreement. The unions' members were free to work for others than the signing employers.

Surely, as free men, the members of these unions had the right to refuse or refrain from working on materials made under conditions which they believed to be inimical to their interests or to the interests of organized labor generally in the field of carpentry; and if they had the right so to refuse or refrain, they had the right to make with employers an agreement which recognized such right

to refuse or refrain and which embodied it in a settlement of the labor dispute caused by their assertion of that primary right, even though as a consequence there was some restriction on the freedom of trade or some economic effect upon prices.

Indeed, the indictment itself recognizes that "wage scale demands" were the content of the unions' position, and alleges that the defendant manufacturers "agreed to accede and did accede" to such "wage scale demands" (par. 28, p. 28). If the unions had the right to make such wage scale demands, the manufacturers had the right to accede thereto and to agree to the consequent closed shop.

(6) Of course, every closed shop, whether closed as to non-union employees or non-union goods or both, may make more costly to the public the product of such shops and will of necessity restrain trade and competition in services or goods or both.

But such is the cost which the American people expect and have decided to pay for free labor, for higher standards of living and of purchasing power on the part of the working millions, and for the collective bargaining which preserves and advances those standards. Thereby, in the long run, the total volume of trade is increased rather than restricted.

Under the decision of the courts below, there is, as we see it, the anomaly that labor may lawfully strike in support of wage scale demands which are lawful as demands, but if the granting of these demands will mean that the employers will ~~or must~~ seek or may get better prices for their products, then both the laborers and the employers "split the take" and the laborers become criminals.

That a closed shop—closed as to both non-union employees and materials—is a lawful labor objective and hence a lawful employment agreement, is thoroughly well settled and is illustrated in *United States v. Carrozzo* (the *Hod Carriers* case), 313 U. S. 539, affirming 37 Fed. Supp. 191, 193. See also:

Gundersheimer's, Inc. v. Bakery, etc. Union, 119 Fed. 2d 205 (U. S. Court of Appeals for District of Columbia);

United States v. B. Goedde & Co., 40 Fed. Sup. 523;

Rambusch Decorating Co. v. Brotherhood of Painters, 105 Fed. 2d (C. C. A. 2d) 134; cert. denied 308 U. S. 587.


(7) Every agreement settling a labor dispute presupposes some "interest" on the part of the employers, quite as much as some "interest" on the part of the union, in making the agreement at all.

It has never heretofore been supposed that only agreements which leave no shred of advantage to the employers, or only agreements the cost of which cannot be passed even in part to the public, are the only agreements within the law.

(8) The law as declared below provides in its logic and in its effect a potent weapon for the destruction of the whole principle and basis of the closed shop, particularly when embodied in a settlement agreement made with a group of employees.

It assures the Government, or some third party asserting injury, a ready and certain means of always claiming motive or purpose or effect and thus of turning every such agreement into a jury issue,—and, what is much worse, a ready and certain means of claiming that the self-interest or purpose of the union is outlawed by the self-interest or purpose of the employers, or by the effect which higher wages may have upon prices.

In a free competitive system higher wages make for higher prices. The increased cost thereby passes to the public; and it is usually the consequence of an agreement to pay higher wages that the new costs will reflect themselves in new prices. Is this consequence, or the possibility of it, an agreement "to split the take"? *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 502, answers "No".



POINT III

The views of the Trial Court that an agreement terminating a labor dispute was a combination; that labor's immunity ceased when such combination occurred; that such combination was a violation of Section 1 of the Sherman Act even though the Union's objective was to protect wages and working conditions, provided the effect was to restrict interstate commerce; and that the Clayton Act and the Norris-LaGuardia Act were not relevant to any issue before the jury, are abundantly revealed and emphasized by the Trial Court's charge and by its refusals of all requests by the labor defendants for clarifying instructions.

These refusals were error and proceeded on conceptions of law which, we submit, violated both statute and settled judicial authority.

A

Our Requests for Instructions

At the conclusion of the trial, this petitioner and the other labor defendants unsuccessfully presented in various forms a large number of requests for instructions concerning agreement with employers. These requests may be summarized briefly as follows:

1. Members of a union may lawfully "decline to work upon or handle" products made under conditions of employment deemed by them to be unfair to their union (1175).

2. In considering the agreement, a relevant issue as regards the labor defendants was whether or not they were "acting in their own self-interest to carry out legitimate objectives of labor" in the matter of wages and working conditions (1177).

3. "The elimination of price competition based on differences in labor standards" is a lawful objective.

of a labor union, "since in order to render a labor combination effective it must eliminate the competition from non-union made goods" (1182); (*Apex Hosiery v. Leader*, 310 U. S. 469, 503-4.)

4. In considering the agreement, a relevant issue as regards the labor defendants was whether they had "acted in their own self-interest and to carry out their own objectives of labor such as a better wage scale and conditions of employment and more jobs for the union members" (1182).

5. The making of the agreement of September 21, 1936 was not in itself a violation of the Sherman Act (1183).

6. That agreement "was legal on its face" (1189).

7. The members of the defendant local unions had the lawful right to take the position that they "would do no work upon any material or article that has had any operation performed on same by saw mills, mills or cabinet shops or their distributors that did not conform to the rates of wage and working conditions prescribed by the agreement of September 21, 1936" (1183).

8. "If the defendant unions and their members deemed it to their interest to refuse to work on material not manufactured in conformity with the rates of wage and working conditions prescribed by the agreement of September 21, 1936, they had a legal right so to do" (1184).

9. In that event "the mere fact that such material may have been made in some state other than California does not render such refusal unlawful or in violation of the Sherman Act" (1184).

10. The agreement could not be a violation of the Sherman Act unless the jury found that it was not made by the labor defendants "to carry out the interests and labor objectives of the unions but solely with intent to conspire and combine with the employer defendants to make the unions the instrument of the employer to restrain interstate commerce to eliminate competition from millwork and patterned lumber in interstate commerce" (1186).

11. In considering the agreement, a relevant issue as regards the labor defendants was whether the prosecution had substantiated the allegations in the Indictment (32) that in the making thereof "the defendant unions were not attempting to enforce or protect the right to bargain collectively nor acting in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the alleged combination and conspiracy was alleged to be directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area" (1191).

12. "A case involves or grows out of a labor dispute when it involves persons engaged in the same industry, trade, craft or occupation, or who have direct or indirect interests therein and a person or association shall be held to be participating or interested in a labor dispute if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs" (1179).

13. In considering the agreement, a relevant issue as regards the labor defendants was whether it "resulted from negotiations to fix terms and conditions of employment" and "grew out of a labor dispute" (1179).

14. In considering the agreement a relevant issue as regards the labor defendants was whether they made it "in order to establish a uniform condition of labor conditions, unionize other mills in the industry, gain jobs or better wages, or for any other legitimate purpose of a labor organization" (1180).

15. "Either agreements or acts done in furtherance thereof by labor defendants for the purpose of furthering the unionization of other shops in the same industry in order to better the conditions and wages of the employees is a legitimate labor activity and does not violate the Sherman Act" (1182).

The Trial Court threw aside all these requests. Exceptions were duly taken, and Assignments of Error were duly filed (1128, 1155-69, 1441, 1591).

We submit that under the Wagner Act, the Clayton Act, the Norris-LaGuardia Act and settled judicial authority, we were entitled to these instructions.

B

Our requests for instructions were sound in law and were necessary for an intelligent understanding by the jury of the controlling issues of law and of fact.

The Wagner Act (U. S. C. Ann. Title 29, Sec. 151) declares it to be the policy of the United States to rectify the inequality of bargaining power between employees and employers

“by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.”

The Norris-LaGuardia Act (U. S. C. Ann. Title 29) declares it to be the policy of the United States in labor matters that the individual employee (§ 102):

“shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.”

Section 105 of that Act immunizes “the doing in concert of the acts enumerated in Section 104”, when done by “persons participating or interested in a labor dispute”.

Among the acts thus immunized, Section 104 includes the following:

“(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 13 of this title.”

Section 113 defines a labor dispute as follows:

“When used in sections 101-115 of this title, and for the purposes of such sections—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employees; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a ‘labor dispute’ (as defined in this section) of persons participating or interested therein (as defined in this section)..

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

The Clayton Act (U. S. C. Ann. Title 29) declares that certain acts shall not "be considered or held to be violations of any law of the United States" (§ 52). Among these "acts"; "whether singly or in concert", are terminating of "any relation or employment"; or "ceasing to perform any work or labor"; or urging "others by peaceful means so to do", or "ceasing to patronize or to employ any party to such (labor) dispute", or urging "others by peaceful and lawful means so to do", or "doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto".

Both the Trial Court and the Circuit Court held that these statutes and statutory provisions were all irrelevant. They were not called to the attention of the jury. The sole issue of fact submitted to the jury as controlling was not framed in relation thereto; and the jury were affirmatively instructed that the claims of the defendants thereunder established no defense and should not be considered. See preceding Point, page 22.

Our requests for instructions were designed to express the relevancy of these Acts; to instruct the jury as to their application and the conditions which they imposed upon any verdict of guilty; and to instruct the jury as to relevant and material issues of fact in accordance with the provisions of these Acts.

We respectfully submit that the sweeping refusal of all these instructions was basic error, and rested upon a view of the fundamental law of the case which led to the erroneous denials of the motions to dismiss the indictment as insufficient and of the motions to dismiss the prosecution's case as insufficient, and which also led to the verdict which thereby became virtually automatic.

POINT IV

The views of the law as expressed by the courts below are directly contrary to settled judicial authority. No other such decision has been made either before or since the Norris-LaGuardia Act.

The basic hypothesis of the Trial Court is that, although a union may with immunity under the Norris-LaGuardia Act demand as working conditions a shop closed against non-union employees or non-union goods, irrespective of where they come from, nevertheless accession and agreement by employers to such demand constitute as matter of law "a combination" which forfeits the immunity under the Clayton Act and the Norris-LaGuardia Act and is condemned by the Sherman Act, if goods which might come from other states are included in or affected by such closed-shop agreement.

No decision upholding such basic hypothesis has been or can be cited.

On the contrary, there are many decisions, including decisions by this Supreme Court, which dealt with achieved agreement between labor and non-labor groups and which held the very opposite.

These judicial decisions have within a month been fully analyzed and their effect declared by the Circuit Court of Appeals in the *Allen Bradley Company* case, 145 F.2. (2d) 215.

Hence, we shall content ourselves with fortifying that analysis with a few observations of our own.

The Hod Carriers Case

On the authority of the *Hutcheson* case, the Supreme Court two months later affirmed in *United States v. International Hod Carriers' Building and Common Laborers' District Council*, 313 U. S. 539, the decision of the Illinois

Federal Court dismissing the indictment as insufficient. In the District Court that case was reported as *United States v. Carrozzo*, 37 F. Supp. 191.

The importance of that decision in the present instance is that *there was an achieved agreement* between the union defendants and the employers, the effect of which was to restrict the interstate commerce of those employers and of manufacturers in other states; and to increase local costs and hence local prices; but the legality of which was sustained as a lawful accession by the employers to the demands and rights of the union defendants.

According to the indictment in that case, the union defendants by calling strikes and threatening to strike had forced paving contractors in the Chicago area to enter into working agreements with the defendant unions "requiring paving contractors using truck-mixers to employ the same number of men which they would employ if truck-mixers were not used" (p. 193). Also; according to the indictment, this conduct and these agreements were intended to exclude, and did exclude, mechanical truck-mixers from the Chicago area and thereby adversely affected the manufacturers of the truck-mixers, all of whose factories were outside the State of Illinois. Obviously, the effect of the agreements was artificially to add to costs and hence swell prices.

According to the opinion of Judge SULLIVAN in that case, the indictment not only alleged the coercing of the Chicago paving contractors into such agreements, but it also alleged (p. 193):

"2. The enforcement of these working agreements between the Hod Carriers' Council and contractors by ordering member unions to strike, and by threats to strike.

"3. Preventing building contractors in the Chicago area from using truck-mixers on building projects by strikes or threats of strikes.

"4. Refusing to approve the employment of, and ordering union members not to work upon, any building or paving project where truck-mixers are used.

"5. Warning manufacturers of truck-mixers, and prospective purchasers thereof, that truck-mixers are not permitted to be sold or used in the Chicago area."

Obviously, the factual allegations of the indictment in this Chicago case, both as to the nature of the agreements with the local employers and as to the action of the local union defendants thereunder, went far beyond anything in either the present Indictment or in the evidence in the present case. There the union demanded what is called "excess employment,"—an objective altogether different from merely better wages as here. There, also, the union actually warned the manufacturers of truck-mixers (all of which were made in other states) that "the truck-mixers are not permitted to be sold or used in the Chicago area." In the present case, there was no such agreement and there was no such action, for the unions were not refusing to work on materials made outside the Bay Area merely because so made, but only on materials made at a lower scale of wages or under non-union conditions, irrespective of where they were so made.

Building & Construction Trades Council Case

An achieved agreement with employers engaged in interstate commerce was also alleged in the indictment in the above case, held insufficient on demurrer by the Supreme Court (313 U.S. 539) on the authority of the *Hutcheson* case.

There the indictment alleged:

"As a result of the wrongful and unlawful conspiracy engaged in by the defendants herein, it has become necessary for aforesaid trucking and drayage firms to hire trucks driven by individuals acceptable to defendants named herein, at an expense far in excess of compensation received by them under their said contracts with aforesaid interstate carriers."

The United Brotherhood of Carpenters Case

An achieved agreement with interstate purchasers and users of plywood was also alleged in the indictment in the above case, held insufficient on demurrer by the Supreme Court (313 U. S. 539) on the authority of the *Hutcheson* case.

There the indictment alleged:

"The said acts of the defendants (strikes and picketing) have caused purchasers and users to cease to purchase Douglas fir plywood from the Harbor Plywood Corporation in the State of Washington for direct shipment from that state to other states in the United States."

The Musicians Case

In *United States v. American Federation of Musicians*, 47 F. Supp. 304 (N. D. Ill.—1942), affirmed *Per Curiam*, 318 U. S. 741, the District Judge said (p. 309):

"The third contention of the Government deserves only a word. Here the employees seek only a contract with their employers for a 'closed shop' (in a sense large enough to include a shop which excludes not only non-union workers but also machines) and they seek this contract primarily for their (the servants') benefit and not for the benefit of a non-labor group. In the Court's opinion *United States v. Brims*, 252 U. S. 549, 47 S. Ct. 169, 71 L. Ed. 403, and like cases, are not pertinent here."

In this case the union comprised "virtually all musicians in the nation who make music for hire"; and it was charged not only with conspiring to prevent the use of "canned music" by radio broadcasting stations, in juke boxes in various establishments, and in the home, but also with accomplishing its purposes through coercion exercised on the record-making companies by notifying them

that the union members would not make musical records. Of course, the union was not interested in the working conditions of the employees of the record manufacturers or the radio stations, but was interested in providing work for its members; and it enforced its boycott in a national, not in a purely local market.

The Rambusch Case

In *Rambusch Decorating Co. v. Brotherhood of Painters*, 105 Fed. (2d) (CCA 2) 134, cert. den. 308 U. S. 587, there was a written agreement between an employer and an international labor union affecting an interstate industry. The question was whether that agreement was a violation of the Sherman Act.

The agreement provided that where a job was done by an employer in a state other than New York (where his seat of business was), he should pay whichever wage scale was the highest, and observe whichever set of hours was more favorable to labor—either the scale prevailing on the site of job, or the scale prevailing in New York.

The employer took a contract to paint a hotel in Roanoke, Virginia. The New York scale was \$1.50 an hour, and the Roanoke scale was 75¢ an hour. The employer found he could hire no painters in Roanoke except on condition that he comply with the Union's demand that he pay the New York scale, to wit, \$1.50 an hour. This demand doubled the employer's payroll. It eliminated his ability to compete in Roanoke with local contractors; and made it impracticable for him to bring his materials and supplies from New York to Roanoke. There is no question but that the Sherman Act covers the sale of services as well as the sale of commodities. (*U. S. v. Gold*; 115 Fed. (2d) (CCA 2) 236, 238.)

Nevertheless, the Circuit Court of Appeals for the Second Circuit unanimously reversed a determination that this agreement was violative of the Sherman Act. It said

the following, which is directly applicable to the present case (138):

"Any contract designed to secure higher wages may restrain trade in one sense if it is effective, for it will hamper the weak employer who cannot afford the increase. In another sense, however, it may promote commerce by making for better and more peaceful labor relations. A contract with such a purpose is hardly to be held illegal of itself, or else all union organization goes."

The Goedde Case

Another case in which there was an agreement between the local unions and the local employers is *United States v. B. Goedde & Co.*, 40 F. Supp. 523,—a decision by Judge LANDLEY in the Eastern District of Illinois. There motions to quash the indictment were granted. According to the indictment "contracts" had been executed between the defendant mill owners and the defendant unions, (a) providing for employment of only such persons as were members of the union, i. e., a closed shop, (b) permitting the mill owners to use the American Federation of Labor Union Label, and (c) "excluding unlabeled lumber." These contracts were charged to be a combination and conspiracy in violation of the Sherman Act inasmuch as they had the effect of excluding or obstructing unlabeled lumber seeking to come into the East St. Louis area from other states,—thus creating, in these respects, a duplicate of the present case.

Judge LANDLEY ruled that the Supreme Court's decision in the *Hutcheson* case required the application to such an agreement of the test of the *Norris-LaGuardia Act*. He said—in language directly applicable to the agreements in the present case (p. 532):

"In following the prescribed test, let us see which of the alleged means employed and acts of labor unions are exempted from criminal prosecution under

the Clayton Act. In the analysis hereinbefore set forth, the acts mentioned under 1 (a) and (b) (Paragraph 48 of the indictment), relating to contracts for closed shops and use of the label are clearly within the legitimate activities of unions as contemplated by the Clayton Act. Under 2 (a) and (b), (c) and (d) (Paragraph 49), it is alleged that the unions warned builders that they would not work with unlabeled materials; warned purchasers that such material would have to be removed and returned to the manufacturer and forced the makers of such material to remove the same from the job and return it to the plants. It would seem obvious that these acts are likewise granted immunity by the Clayton Act. Under 3 (Paragraph 50) we have alleged intimidation of builders by strikes and threats to strike, thereby forcing them to buy union labeled material, although similar products could be purchased at lower prices in other states. This too is exempt within the language of the Clayton Act. The resulting effect upon interstate commerce is purely incidental, United States v. Hutcheson, 312 U. S. 219, at page 241, 61 S. Ct. 463 '85 L. Ed. 788. Each of the acts thus far mentioned apparently is, by the Clayton Act, recognized as a legal economic weapon of labor unions."

It is true that Judge LINDLEY further stated, by way of dictum, that other charges in the indictment as to the use of violence and threats and as to the refusal to install material *merely because it was manufactured in states other than Illinois*, had no immunity under the Norris-LaGuardia Act; but those statements have no bearing on the present case, because here no violence was charged in the indictment and because the labor defendants were not charged in the indictment with refusing to work on materials coming from other states *merely because they came therefrom*. Moreover, no such issues were here presented to the jury. The sole charge here was that the labor defendants would not work on materials manufactured under less favorable rates of wage and working conditions no matter where such manufacture occurred.

According to the Trial Court's charge to the jury herein an agreement *to that effect* constituted as a matter of law—and without more—a violation of the Sherman Act.

On the other hand, under the decision of Judge LINDLEY, just such a refusal by the labor defendants and just such an agreement by employers recognizing and giving effect to just such a refusal, was held to be, as regards the labor defendants, within the immunities of the Norris-LaGuardia Act.

The Gundersheimer Case

Another case involving an agreement is *Gundersheimer's Inc. v. Bakery, Etc. Union*, 119 Fed. 2d, 205 (U. S. Court of Appeals for the District of Columbia).

There a bakery corporation, having its shop in the District of Columbia, brought an action under the Sherman Act for treble damages by reason of a strike called among its employees to enforce the following demands (p. 206):

"You can't buy cakes in Philadelphia, and you cannot make cakes in your own plant *unless you will agree not to buy any cakes out of town* . . . the reason being, they said, the wage scales in Philadelphia paid to men working in the plant there were lower than the scales paid to the men here."

There the defendant union was demanding that the plaintiff-employer *agree* with it not to purchase in Philadelphia and import into the District of Columbia any cakes made in Philadelphia where a lower wage scale was being paid. The Court of Appeals held that the Union had a lawful right to demand *such an agreement* and to close down the plaintiff's business in order to coerce such an agreement, notwithstanding that both the object and the express provisions of the agreement would prevent the plaintiff from securing, through interstate commerce, products for its shop.

Obviously, if the union had the right to destroy the plaintiff's business in order to coerce the agreement which it demanded, its success in obtaining that agreement could not be criminal.

Other Controlling Decisions

Bakery Drivers Local v. Wohl, 315 U. S. 769;
American Federation of Labor v. Swing, 312 U. S. 321;

Milk Wagon Drivers' Union v. Lake Valley Co.,
 311 U. S. 91;

New Negro Alliance v. Sanitary Grocery Co., 303
 U. S. 552;

Lauf v. E. G. Shinner Co., 303 U. S. 323;

Senn v. Tile Layers Union, 301 U. S. 468;

Amer. Foundries v. Tri-City Council, 257 U. S.
 184, 209;

Barker Painting Co. v. Brotherhood of Painters,
 15 Fed. (2) (C. C. A. 3) 16;

International Ladies Garment Workers' Union v.
Donnelly Garment Co., 110 Fed. (2) (C. C. A. 8)
 892;

Taxi-cab Drivers' Local Union v. Yellow Cab Co.,
 123 Fed. (2) (C. C. A. 10) 262;

International Ass'n v. Pauly Jail Bldg. Co., 118
 Fed. (2) (C. C. A. 8) 615;

U. S. v. Local 807, 118 Fed. (2) (C. C. A. 2) 684;
 315 U. S. 521;

Green v. Obergfell, 121 Fed. (2) (Ct. of App. D.
 C.) 46;

U. S. v. Gold, 115 Fed. (2) (C. C. A. 2) 236.

POINT V

The dictum in the *Hutcheson* opinion concerning a combining by a labor group with a non-labor group and the footnote reference therein to the *Brims* case seem to have been the basis of the decision in the courts below. We submit that they were misunderstood and misapplied.

The best and most recent analysis of this dictum and footnote is contained in the opinion of the Circuit Court of Appeals for the Second Circuit in *Allen Bradley Co. v. Local Union No. 3*, 145 Fed. (2d) 215, decided October 12, 1944. That analysis, so completely and forcefully expresses our own view that we quote from it at some length (223, 225):

"The doctrine that a union necessarily forfeits the benefits of its statutory exemption from the antitrust laws when it combines with non-labor groups, which has been asserted by some authorities, is rested upon a reading in the most extensive form possible of a limitation noted by Mr. Justice Frankfurter to the doctrine stated in the *Hutcheson* case, as follows: 'So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under §20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means.' And then to the word 'groups' he dropped a footnote, which reads: 'Cf. *United States v. Brims*, 272 U. S. 549, 47 S. Ct. 169, 71 L. Ed. 403, involving a conspiracy of mill work manufacturers, building contractors and union carpenters.' 312 U. S. at page 232, 61 S. Ct. at page 466, 85 L. Ed. 788. The *Brims* case affirmed the conviction of union members in the Chicago area who refused to work on non-union out-of-state mill work, with the result that an exclusive market was established for the local manufacturers; and the argument is that by

these words of the Court the *Brims* case is still left in unabated force.

"Now it is doubtful if Justice Frankfurter intended to define precisely just the extent of the limitation the Court had in mind. There was no necessity for him to do so at that time; and the matter had ramifications which the Court would not be likely to dispose of cavalierly. Hence the excepting sentence doubtless should not be read with exacting literalness; but in view of the use which has been made of it, we should note that it is not a positive affirmation, but a statement of only restricted reach. If its converse is to be accepted as an affirmative, it is not that combinations with non-labor groups are taboo, but only that when a union no longer acts in its self-interest and does so combine, then the licit and the illicit may have to be determined by a judgment as to the rightness or wrongness, etc., of the union end or purpose.

"It seems to us that this is the distinction the Supreme Court had in mind in its reference to the *Brims* case, and that the latter cannot now be held as broadly applicable as perhaps it was originally. As one commentator puts it, the *Brims* case 'should be deflated to its position as one of a line of cases uncritically condemning refusal to work on non-union products delivered in interstate commerce'—a position no longer tenable in the form stated—and that 'when the union is permitted to act alone, an agreement with employers should not automatically add the condemnable virus'. *Tunks, A New Federal Charter for Trade Unionism*, 41 Col. L. Rev. 969, 1012. This distinction seems to us the logical deduction to be made from the present state of Supreme Court decisions, and to be consistent with the statutes upon which the Court relies, and which do not in terms exclude business-labor combinations, but, as we have seen, do extend the inclusive labor dispute to include employment interest not themselves primarily engaged in a controversy as to terms and conditions of employment. On this basis it would follow that here the activities which cannot be forbidden to Local 3 acting by itself are not to be interdicted because other groups join with them to the same end."

This dictum in the *Hutcheson* case was, we believe, intended merely to be a restatement in other language of the following observation of this Court in *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 510:

"This is not a case of a labor organization being used by combinations of those engaged in an industry as the means or instrument for suppressing competition or fixing prices. See *United States v. Brims*, 272 U. S. 549; *Local 167 v. United States*, 291 U. S. 293."

POINT VI

The case of *United States v. Brims*, 272 U. S. 549, has no application for a number of reasons. If it can have any bearing, that bearing makes for a reversal.

1. The case was decided on November 23, 1926, six years before the Norris-LaGuardia Act and nine years before the Wagner Act were enacted.

2. It was decided at a time when *Duplex Co. v. Deering*, 254 U. S. 443, was supposed to represent as regards labor unions the proper view of the Sherman Act and the Clayton Act.

3. The Supreme Court's decision turned on a question of fact peculiar to that Record, to wit, whether or not there was sufficient evidence to sustain the charge in the indictment and the finding of the jury that the agreement in the case was not one "merely whereby union defendants were not to work upon non-union made millwork" wherever it came from (p. 551), but rather was an agreement in the interest of Chicago manufacturers that the products of their competitors in other states would be effectually kept out of Chicago with the aid of the union which they bribed with an offer of higher wages.

4. That the combination was instigated by the Chicago manufacturers for their self-interest was emphasized in the Government's brief before this Court (p. 38).

5. This Court has interpreted the *Brims* case as "a case of a labor organization being used by combinations of those engaged in an industry for suppressing competition or fixing prices." (*Apex Hosiery Co. v. Leader*, 310 U. S. 469, 510.)

POINT VII

In the important matters of non-union articles and of the absence of the Brotherhood's union label—matters vital to the Brotherhood and trade unionism,—the Trial Court basically erred in its exclusion of such considerations as irrelevant.

(1) The right of a national or international labor union to adopt a union label and to encourage or bind its members not to work on material not bearing such label or not union-made, is a necessary principle of trade unionism and has never before been rejected judicially as a lawful labor objective.

Even under the prosecution's own interpretation of the indictment, it should have been held relevant for the jury to decide whether the unions' attitude against certain articles involved in the testimony was merely because they came from outside the state, or rather was because they were non-union made or unlabelled. Yet the jury were instructed to the contrary (1151-2).

The Constitution of the United Brotherhood provided, concerning the official union label, as follows (459, 460-1):

"It shall be the duty of all district councils, local unions and each member to promote the use of trim and shop-made carpenter work, hotel, bank, bar, store

and office fixtures, and of church, school, household furniture, etc., and to make generally known to the members of the local union that it is necessary to all mill and shop members and the United Brotherhood that products made in factories, shops or mills where only members of the United Brotherhood are employed should be installed by fellow members. . . .

"Members of this organization should make it a rule, when purchasing goods, to call for those which bear the trademark of organized labor."

The obligations assumed by every member on his initiation include (766):

"I will use every honorable means to procure employment for Brotherhood members, agree to ask for the union label and purchase union-made goods."

The foregoing provisions of the Brotherhood's Constitution express elementary rights of trade unions, both at common law and under the Clayton and Norris-LaGuardia Acts.

Nevertheless, the Trial Court held that these constitutional provisions and the observance of them by the local unions in the Bay Area were irrelevant and not to be considered by the jury. The Court charged (1152):

"Some testimony has been heard here concerning the union label of the United Brotherhood of Carpenters and Joiners of America. In this connection, I charge you that whether the millwork and patterned lumber involved in the testimony in this case was manufactured in mills whose employees were members of the United Brotherhood of Carpenters and Joiners of America or of its affiliated unions, or whether such millwork and patterned lumber bore a union label, is not to be considered by you."

On the subjects of the union label and of non-union goods, the Brotherhood submitted various requests for instructions, all of which were refused. These refusals

are set forth in the Assignments of Error beginning on pages 1541 *et seq.* and 1566 *et seq.*

(2) Moreover, the Trial Court also ruled throughout the trial that, as regards the actions of the union defendants, the absence of the union label on articles which came before them for work or in competition with union-made articles, was wholly immaterial and irrelevant; and that, as regards any instance being put in evidence by the prosecution, the defense could not present proof that the articles involved were non-union made or unlabeled.

As examples of these exclusions of the union defendants' proof, see pages 347-9, 365, 369.

These rulings were excepted to (365-366, 369, 605), and are assigned as error (1456-7, 1604).

(3) Thus, by these exclusions of the unions' proof, the prosecution was enabled to create the erroneous impression that certain shipments were picketed or placarded by the labor defendants not in the exercise of their constitutional right of free communication and of opposition to non-union and unlabelled articles, but merely because the shipments came from without the state. (See *Senn v. Tile Layers Union*, 301 U. S. 468; *Bakery, etc., Local v. Wohl*, 315 U. S. 769.)

In other words, the prosecution was permitted to use the unions' efforts against certain incoming shipments as evidence of the conspiracy charged, but the defense was barred from showing in explanation that the articles in question were unlabelled, non-union goods (to-wit, "scab" goods), or had been made by the CIO, this petitioner's most militant enemy.

POINT VIII

The Trial Court erred in refusing the Brotherhood's requests for instructions as to the law governing the question of imputation of guilt to it by reason of any alleged acts of its officers, and in charging the jury as it did on this vital subject.

(1) It is highly significant that in the case of each local union which was indicted certain of its officials were indicted also, whereas the United Brotherhood was indicted but none of its general executive officers were.

Under these circumstances the United Brotherhood (the unincorporated international body) was vitally concerned to have the jury fully instructed on the law of *the imputation of guilt*, for there was not a particle of evidence that the United Brotherhood through its General Executive Board or the body of its membership did anything at all in the premises or even had any knowledge thereof.

(2) The General Convention is the supreme authority of the Brotherhood. It meets every four years and is composed of delegates elected from all over the United States (559).

The supreme governing body of the United Brotherhood (subject only to its General Convention) is the General Executive Board which consists of a number of members, seven of whom are elected from different regions (558).

Nevertheless, notwithstanding this established background, the Trial Court charged the jury (1138):

"It has been stipulated in this case that labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that Act, separately and apart from the guilt or innocence of their members.

"You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents."

In the case of corporations the Trial Court charged that criminality was to be determined by the following test (1137):

"The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation."

The United Brotherhood excepted and has assigned error (1155-6, 1158, 1529, 1530, 1598).

Obviously, the test or standard thus given to the jury was that applicable in a *civil case*, where there is such a principle as imputed responsibility. But no such principle exists in a *criminal case*, where guilt is and must be personal.

Here there is no proof or even suggestion that the United Brotherhood ever authorized or directed any of its General Executive Officers or any other agent to commit a crime on its behalf. The authority delegated by the Constitution cannot, by any stretch of the imagination, be deemed to include commission of crime for, or in the name of, the United Brotherhood.

(3). In this criminal case the real test or standard applicable to the United Brotherhood is thus stated in Section 106 (U. S. C. A., Title 29) of the Norris-LaGuardia Act:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States

for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

In consequence, the United Brotherhood asked the Trial Court to instruct the jury (Request 56, p. 1173):

"You are instructed that no labor union or organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find (896) upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof."

It also asked the Trial Court to instruct the jury (Request 55, p. 1172):

"You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act."

The United Brotherhood also was vitally concerned to have the jury instructed that the United Brotherhood was not responsible *ipso facto* or on any principle of imputation for any criminal acts of any of its local unions or district councils. The following request on this subject would seem elementary (Request 57, p. 1173):

"You are instructed that an international trade union, that is, the international body, is not responsible for the acts of a district organization or union affiliated with and chartered by it except as such international body expressly authorizes the act of the local union or association. The International Brotherhood of Carpenters and Joiners of America cannot be

found guilty in this case unless you find that it authorized acts to be done, or performed such acts with the intent of restraining interstate commerce pursuant to a conspiracy with the employer defendants to act as the instrument of the employers to suppress competition."

All these requests were refused. There are exceptions and Assignments of Error (1155, 1158, 1602, 1532-3, 1598-9).

(4) That the Court's charge and its refusals of Requests 55 and 56 *supra* were erroneous is determined by the decision of the Circuit Court of Appeals for the Second Circuit in *United States v. International Fur Workers Union*, 100 Fed. (2d) 541, certiorari denied 306 U. S. 653.

In that case, in a prosecution under Section 1 of the Sherman Act, a verdict of guilty was rendered against an international union (International Fur Workers Union of the United States and Canada) and against a number of its local unions and certain officers of the international and of the local unions. This verdict against the international union was reversed by the Circuit Court of Appeals for the very error that occurred in the present case. To quote (547):

"But an officer of an unincorporated association, no more than an officer of a corporation, is not authorized merely by virtue of his office to make his principal a party to an unlawful conspiracy. See *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 45 S. Ct. 551, 69 L. Ed. 963; *Hill v. Eagle Glass & Mfg. Co.*, 4 Cir. 219 F. 719, modified on other grounds in *Eagle Glass & Mfg. Co. v. Rowe*, 245 U. S. 275, 38 S. Ct. 80, 62 L. Ed. 286. All that the court said on this subject was that if the individual defendants did the things charged against the unions 'upon behalf of the unions,' they might be found guilty along with the individuals. To this the appellant unions excepted. It was erroneous; it excluded the

issue whether the unions had authorized or ratified what their officers did upon their behalf. For this reason the conviction of each of the labor union appellants must be reversed."

In *U. S. v. Local 807*, 118 Fed. (2d) (C. C. A. 2) 684, Judge Clark in his concurring opinion said (p. 688):

"It is hornbook law that, absent a clear legislative intent, an unincorporated association does not commit crimes, 7 C. J. S., *Associations*, §17, p. 43."

(4) That the Court's refusal of Request 57 *supra* was also error is conclusively determined by *Coronado Co. v. United Mine Workers*, 268 U. S. 295, and *Truck Drivers' Local v. United States*, 128 Fed. (2d) (C. C. A. 8) 227.

In the *Coronado* case, the plaintiff sued to recover damages for an alleged conspiracy by the defendants in violation of Section 1 of the Sherman Act. In the Trial Court there was a directed verdict and judgment for the defendants which was affirmed by the Circuit Court of Appeals. The Supreme Court affirmed this determination in the case of the International Union of Mine Workers of America, but reversed it in the case of the defendant local unions, and of the defendant individuals who were officers of the International and of the local unions,—thus drawing a sharp distinction between, on the one hand, the criminal liability of an International Union and, on the other hand, of its officers and local unions and their officers.

In that case one James K. McNamara, who was himself a defendant and secretary of one of the defendant local unions, had turned state's evidence and had testified that he had had talks with the defendant John P. White, who was President of the International, in which White instructed him to do various illegal and violent acts to prevent coal from being mined and sent into interstate commerce, and promised that McNamara and those who assisted him would be paid by the International Union.

White also, at various times, made speeches of "earnest approval" of the strikes, and reported on them to the International Board. Editorials in the International's magazine defended them (p. 300).

Nevertheless, and notwithstanding that the case before it was merely a *civil case*, the Supreme Court held that these acts by the President of the International and the accompanying acts of conspiracy and violence by the local unions and their officers and members did not bind and render liable the International. The Supreme Court quoted from the General Constitution of the United Mine Workers of America certain provisions which closely resemble the General Constitution of the United Brotherhood of Carpenters and Joiners of America, and then said (300):

"It does not appear that the International Convention or Executive Board ever authorized this strike or took any part in the preparation for it or in its maintenance, or that they ratified it by paying any of the expenses."

(5) Also conclusive *à fortiori* is the decision of the Circuit Court of Appeals for the Eighth Circuit in the criminal case of *Truck Drivers' Local No. 421, et al. v. United States*, 128 Fed. (2d) 227,—decided May 22, 1942.

There, Truck Drivers' Local No. 421, its financial secretary and business agent were convicted on an indictment under Section 1 of the Sherman Act. This conviction was affirmed as to the financial secretary, but was reversed as to the union and the business agent, on the ground that the evidence was insufficient.

In reversing the conviction of the union, the Circuit Court of Appeals held that the union could not be found guilty because of the actions of its president (who had also been indicted but died before the trial), or because of the actions of a subordinate body of the union known as the "milkmen's division", or because of the actions of the

members of such subordinate body, or because of the actions of the union's financial secretary.

The Circuit Court discussed at length the aforesaid decision of the Supreme Court in the *Coronado* case and quoted therefrom; and then said (p. 235):

"We do not believe that on the record before us a jury could be permitted to find that the actions of the milkmen's division and its members, the efforts of the president of the union and the hearings held by the disputes committee and the executive board could be imputed to the union as a matter of general agency. To bind the union in a situation such as this, actual and authorized agency was necessary; mere apparent agency would not be sufficient to take the matter to the jury, unless the circumstances were so strong as competently to support an inference of actual authority."

See also *Barker Painting Co. v. Brotherhood of Painters*, 15 Fed. (2d) (C. C. 3, 3) 16, 18.

CONCLUSION

The judgment against this petitioner should be reversed, and the indictment against it should be dismissed.

At the very least, a new trial as to this petitioner should be ordered.

February 10, 1945.

Respectfully submitted,

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U. S. DISTRICT COURT, S. D. N. Y.

MAR 7 1945

IN THE
Supreme Court of the United States
October Term, 1944

No. 666

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

Petitioner

against

THE UNITED STATES OF AMERICA.

Respondent.

No. 667

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ET AL.,

Petitioners,

against

THE UNITED STATES OF AMERICA.

Respondent.

REPLY BRIEF FOR UNION PETITIONERS

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Respondent.

REPLY BRIEF FOR UNION PETITIONERS

I

The basic issue as stated by the respondent itself;
and the effect of the respondent's concessions.

(1) In substance and effect, the basic issue, as stated
by the respondent itself, is whether the written agree-
ments of 1936 and 1938 are violative of Section 1 of the
Sherman Act as matter of law (p. 20).

The respondent must sustain the affirmative of that issue. In no other way can it justify the directive charge to the jury and the wholesale refusals of all the union defendants' requests to charge.

(2) Indeed, the respondent realizes and expressly concedes that it must go even further, to wit, that these written agreements of 1936 and 1938 were violative of Section 1 of the Sherman Act, notwithstanding that (p. 21):

"it [such agreement] was entered into as an incident to a dispute between employers and employees concerning terms or conditions of employment or that the union group participated in the agreement for the purpose of promoting their own self-interest."

(3) And with further frankness and inevitability the respondent's brief also concedes (p. 26):

"It may be conceded that the validity of the convictions of the petitioners who stood trial must be tested upon the assumption that the agreement not to purchase low-cost and low-wage-scale millwork grew out of such a dispute [between employers and employees concerning terms or conditions of employment]."

(4) Still further narrowing the basic issue of law, the respondent's brief expressly states and concedes (p. 28) that, within the definition of the Norris-LaGuardia Act, the union defendants were engaged in a labor dispute not only with the employers in the Bay Area but also with the "out-of-State" employers who imposed less favorable wages and working conditions. To quote this important and realistic concession (p. 28):

"It is true that under the broad definition of parties to a labor dispute contained in Section 13 of the Norris-La Guardia Act, the out-of-State producers of mill work would be parties to a labor dispute be-

tween the Bay Area manufacturers and their employees. It is also true that Section 20 (of the Clayton Act) immunizes 'ceasing to patronize' a party to a labor dispute or 'recommending, advising or persuading others . . . so to do'."

The vital importance of this concession by the respondent is that, even if (contrary to the fact) the written agreements of 1936 and 1938 could be regarded as ending a current labor dispute between the union defendants and the signatory Bay Area employers, those agreements could not at all be regarded as ending the concededly existing and continuous labor dispute between the union defendants and the non-conforming "out-of-State" employers (1501, 1499), and between the union defendants and the rival CIO which was engaged in a campaign to capture the industry (817-8, 1500-7, 1456-7, 1190, 1566). Articles bearing the union label of the United Brotherhood were worked on, irrespective of any other consideration (982, 896-901).

Hence, this basic and unavoidable concession does four things:

(1) It knocks the foundation out from under the decision of the Circuit Court of Appeals by destroying its fundamental predicate that the Norris-La Guardia Act had no application because, by reason of the making of the 1936 and 1938 agreements, "the dispute is past" (1684).

(2) It also knocks the foundation out from under the trial court's charge to the jury which never mentioned the Clayton Act or the Norris-LaGuardia Act and obviously deemed them irrelevant because as "the result" of such agreements there had been "the settlement of a labor dispute" (1152).

(3) It also knocks the foundation out from under the conviction because the trial court failed and refused to give as an instruction to the jury the very principle of law which the respondent now concedes to be sound (1546-9).

(4) It also knocks the foundation out from under the respondent's own argument (p. 21) that the conviction can be sustained as matter of law on the theory of a "boycott" against such "out-of-State" employers.

(5) Actually, the written agreements of 1936 and 1938 were not, even as between the union defendants and the signatory Bay Area employers, "the end" of a labor dispute, but rather were mere temporary revocable truces,—or, as the respondent's own brief aptly puts it, were merely "an incident to a dispute between employers and employees concerning terms or conditions of employment" (p. 21). (See Main Brief for United Brotherhood, p. 6, and Main Brief for Bay Counties District Council, pp. 10, *et seq.*). "The employer-employee relationship was the matrix of the controversy." *Columbia River Packers Assn. v. Hinton*, 315 U. S. 143, 146.

Hence, even as between the defendant unions and the signatory Bay Area employers, the basic ruling of the courts below that the Norris-LaGuardia Act was irrelevant as a matter of law because "the dispute is past" (p. 1684), was erroneous. That ruling not only misconceived the nature and extent of the immunization by the Clayton and Norris-LaGuardia Acts, but it also erroneously took from the jury consideration of the real effect of such agreements as mere temporary, unstable and revocable truces in a continuous labor dispute with the Bay Area employers, and erroneously gave to those agreements the effect of finality and termination as a matter of law.

But, even if this were otherwise, the respondent's concession last above-quoted entirely destroys the whole hypothesis of a "past" or "ended" labor dispute and hence inevitably upsets the conviction, because the agreements of 1936 and 1938 were *not* made with the "out-of-State" employers and hence did not end even for a moment the labor dispute with them.

Indeed, so far from ending any labor dispute with such "out-of-State" employers, the agreements were effective weapons in continuing and pressing home the unions' side of their continuing and active labor dispute with all non-conforming employers and with the rival CIO union. They constituted continuous union pressure on all employers (out-of-state and otherwise) who were imposing less favorable wages and working conditions, to bring up their wages and working conditions to the standards set in these agreements and thus to accept unionization and the improvement of the living and working conditions of employees in areas of the industry in addition to the Bay Area.

All this illustrates the truth of the following statement in our Main Brief for the United Brotherhood (p. 7):

"The long-range view of the unions was to promote wages and unionization throughout the entire industry everywhere."

(6) In consequence, the respondent's concession last above-quoted not only upsets the theory of the charge to the jury and the theory of the affirmance in the Circuit Court of Appeals, but it also makes clearly erroneous the refusal of various requests for instructions presented by the union defendants (1175 *et seq.*, 1546).

For example, the concession makes erroneous the refusal to charge Request No. 46 (1178, 1546):

"An attempt to unionize non-union workers and improve working conditions of labor employed in an industry involves a labor dispute within the meaning of the Norris-LaGuardia Act, and such activity on the part of a labor union is therefore exempted from the operation of the Sherman Act, and does not violate that Act."

The concession also makes erroneous the refusal to charge Request No. 77 (1178, 1546-7):

"You are instructed that a labor dispute 'includes any controversy covering terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.' A person is participating or interested in a labor dispute if he is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation."

The concession also makes erroneous the refusal to charge Request No. 78, the main portion of which is (1179, 1547):

"A case involves or grows out of a labor dispute when it involves persons engaged in the same industry, trade, craft or occupation, or who have direct or indirect interests therein and a person or association shall be held to be participating or interested in a labor dispute if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs. The term 'labor dispute' includes any controversy concerning terms or conditions of employment."

The concession also makes erroneous the refusal to charge Request No. 97 (1190, 1566):

"You are instructed that the union defendants have the right to decline work or agree not to work upon products made by a CIO or a company union in carrying out their own labor objectives."

So, likewise, as to Request No. 79 (1180, 1549).

II

The respondent seeks to avoid its own concessions by falling back on its own version of disputed matters of fact which were never submitted to the jury, which the trial court held irrelevant, and as to which the trial court refused all our requests to charge.

(1) At page 26 the respondent seeks to avoid its own concessions as to the determinative issues and as to the applicable law, by stating:

"Here, however, the purpose and effect of the combination was to suppress competition in interstate commerce of goods made by others; its object was not to compel employer accession to any union demands by raising wages, reducing hours, union recognition, or other labor objectives; it was intended to have and had the effect of raising prices and reducing competition. In these circumstances we think that the decision in the *Aper* case affords no basis for immunizing the combination involved here."

To use a colloquialism, this statement is merely an effort by respondent to lift itself by its own boot straps. It is merely the respondent's version of disputed matters of fact.

No such statement of a purpose, object and effect on the part of the union defendants is contained in the agreements of 1936 and 1938; and no such formulation of issues was given to the jury. On the contrary, the jury was told that the "sole" question before it was whether these agreements "intended to *or did* restrain the shipment of millwork and patterned lumber in interstate commerce" (1153).

The respondent's own express concession that the verdict cannot stand if the trial court erroneously ruled that it was no defense "that the union group participated in the agreement for the purpose of promoting their own

self interest" (p. 21), shows the fallacy and irrelevance of the respondent's above-quoted attempt to predicate the relevance of an opposite purpose and to assume that such opposite purpose was proven as a matter of law.

As a matter of fact, the agreement of 1936 itself asserted that Paragraph 16 was "in the interest of standardization of rates of wages and working conditions" (p. 283). Thus the agreement predicated the integration of that paragraph with a labor dispute, and also predicated a labor objective as the objective of the paragraph itself. These predicates and this labor objective were reasserted and confirmed by the sole standard provided in the agreement for the operation of the paragraph itself, to wit: conformity "to the rates of wages and working conditions of this agreement" (284).

(2) Moreover, the respondent, in making the above-quoted assertions on page 26 of its brief, has overlooked its own concession made on page 28 and discussed in the preceding Point hereof, that under the definitions in Section 113 of the Norris-LaGuardia Act (U. S. C. Ann.), "the out-of-State producers of mill work would be parties to a labor dispute" with these union defendants. In consequence, these union defendants were fully entitled to utilize; as a weapon in their economic conflict with "the out-of-State producers of mill work" and all other non-conforming employers, insistence on conformity to the rates of wages and working conditions in the 1936 agreement, and thereby to seek to force all non-conforming employers to accept unionization and the agreed rates of wages and working conditions,—for the benefit of the whole union cause and of all union members.

By the very terms of the Norris-LaGuardia Act and the Clayton Act, union labor could lawfully and "in concert" cease or refuse to perform any work, terminate any relation of employment, cease "to patronize", or employ any party to a labor dispute, persuade or advise

others by lawful means so to do, and agree with others to do or not to do any of such acts. Such acts are not "violations of any law of the United States". (Clayton Act, Sec. 52; Norris-LaGuardia Act, Sec. 104; U.S.C., Ann., Title 29.)

Since, therefore, the respondent concedes that the economic conflict with the non-signing and non-conforming employers remained a labor dispute, unsettled and unended by the agreements of 1936 and 1938 (p. 28), the respondent cannot argue that the closed shop created by such agreements and limited to articles not conforming in wages and working conditions was an illegal and illicit defense measure by the union defendants as against the non-signing and non-conforming employers and as against the rival and militant CIO (817, 818, 1499, 1500-7, 1456-7, 1190, 1566).

"As an incident to" such unsettled and unended labor dispute (resp.'s brief, p. 21), such a closed shop so limited was expressly immunized, as regards the union defendants, by the Clayton and Norris-La Guardia Acts.

In this connection it is significant that the respondent's brief argues only the language of the Clayton Act, notwithstanding that the *Hutcheson* decision, 312 U.S. 219, 231, holds that the Sherman Act, the Clayton Act and the Norris-LaGuardia Act are "interlacing statutes" (p. 232) and "a harmonizing text of outlawry of labor conduct" (p. 231).

III

The respondent's attempt to present the agreements of 1936 and 1938 as a "boycott" of articles made by non-conforming employers or by non-union labor operates, on analysis, against the respondent itself.

(1) The respondent's resort to the invidious terminology of "boycott" really means, when logically pursued, that the respondent is attempting (doubtless unwittingly) to restore the doctrine in the *Bedford Cut Stone Co.* case, 274 U. S. 37, and in the *Duplex Co.* case, 254 U. S. 443, notwithstanding that that doctrine has been legislatively overruled by the Norris-LaGuardia Act and has also been judicially overruled in *United States v. Hutcheson*, 312 U. S. 219.

Indeed, the respondent's brief actually cites both those decisions as still "settled" judicial authority (p. 40).

In fact, the logical end of the respondent's pursuit of the "boycott" theme goes even further.

In the *Bedford* and *Duplex* cases, all that was held was that a union boycott of articles belonging to persons not parties to the union-employer dispute was a secondary boycott and violative of the Sherman Act. But, in the present case, the articles said to be "boycotted" were, according to the concession in the respondent's own brief (p. 28), articles belonging to and made by non-conforming employers with whom the union defendants had a present and continuing labor dispute as defined in Section 113 of the Norris-La Guardia Act (U. S. C., Ann., Title 29).

In other words, the respondent, doubtless unwittingly but nevertheless according to its own logic inevitably, is attempting not only to restore the doctrine of the *Bedford* and *Duplex* cases, but to carry it even further and to make it unlawful for a union to boycott the goods of non-con-

forming employers with whom it is engaged in a labor dispute, and also to make it unlawful for the union to persuade its own employers to accede to the union's demands that their shops be closed against such goods.

(2) The respondent seeks to escape the immunity given by the Clayton and the Norris-LaGuardia Acts to a union in a labor dispute to cease to "patronize" and to "persuade" and "agree" with "others" "so to do," by arguing that these words only (p. 28)

"describe the boycotting of a product by ultimate purchasers or consumers and propagandizing on behalf of such boycott."

Any such limitation defies the unrestricted scope of the words used. It is merely the latest example of the unceasing effort to have this Court hold that these Acts mean less than they say, and to restore "the tangled verbalisms" which those Acts were intended to "cut through." "Such legislation must not be read in a spirit of mutilating narrowness." (*U. S. v. Hutcheson*, 312 U. S. 219, 235, 236.)

The respondent cites no precedent for its proposed limitation; and that limitation was itself squarely rejected in the decisions cited on pages 37 to 45 of the Main Brief for the United Brotherhood. See particularly *U. S. v. American Federation of Musicians*, 318 U. S. 741.

IV

The respondent's effort (pp. 2, 20) to present the agreements of 1936 and 1938 as nothing but an undertaking by local manufacturers not to purchase mill-work from other states, made under a lower wage scale, is a distortion of those agreements and is irrelevant to the issues on this review.

It is unfortunate that in quoting from paragraph 16 of the agreement of 1936 and from paragraph 17 of the agreement of 1938 the respondent has in each case chopped off and omitted the introductory part of the sentence which it quotes.

Thus, at page 11, in purporting to quote paragraph 16 of the agreement of 1936, the respondent omits the sentence's introductory and qualifying words "in the interest of standardization of rates of wages and working conditions" (283). So likewise at page 12, in purporting to quote paragraph 17 of the agreement of 1938, the respondent omits the sentence's introductory and qualifying words "in the interest of providing employment" (293).

These words thus expunged by the respondent from its quotations of the respective closed-shop paragraphs are the characterizing words which define the purpose and objective of the respective paragraphs, and which establish the meaning of the paragraphs to be that in conformity with the unions' refusal to work on articles made under less favorable wages and working conditions, their employers will not purchase such articles for manufacture.

The agreements of 1936 and 1938 relate exclusively to manufacture. The employers were manufacturers and the union employees were workmen engaged in the manufacture conducted by the employers. Paragraph 16 of the agreement of 1936 and paragraph 17 of the agreement of 1938 were definitions of what each party would do in

connection with this process of manufacture, conducted in the factories of the employers, in view of the fact that the employers were acceding to the demands of the union that such factories be closed shops—closed not only against non-union employees but also against articles made under less favorable wages and working conditions. Such a closed shop was lawful. (See Clayton and Norris-LaGuardia Acts, and cases cited at pages 29 and 30 of the United Brotherhood's Main Brief.)

This aspect, purpose and objective of these two paragraphs we sought to get before the jury by various requests to charge, all of which were refused (1558, 1561-2, 1549); and, as already stated, the trial court instructed the jury that these agreements constituted a combination and that if restraint of interstate commerce was their consequence, they were automatically violative of the Sherman Act (1153).

The trial court consistently and expressly ruled out evidence offered by the union defendants to prove their purpose and intent (1483-4, 1497-8, 1500-4).

We do not understand that the respondent ventures to claim that the unions acting alone could not lawfully demand that their manufacturing employers should not purchase for manufacture articles made under less favorable wages and working conditions. How then can the manufacturers' accession to this demand convert the unions into criminals?

Moreover, and aside from these considerations, the unions had a perfect right under the Clayton Act and the Norris-LaGuardia Act to quit work if the manufacturers employing them purchased articles to be worked on which were made under less favorable labor conditions. They also had the right to advise and persuade their employing manufacturers not to "patronize" the non-conforming manufacturers (wherever situated) with whom, as the respondent itself concedes, these unions were engaged in

a labor dispute (p. 28); and they had the further right to agree with their own employing manufacturers that there would not be such patronizing. Such acts are not "violations of any law of the United States" (Clayton Act and Norris-LaGuardia Act, U. S. C. Ann., Title 29, Secs. 52 and 104).

V

The factual differences between the present case and the *Allen Bradley Company* case (145 Fed. (2d) 215).

At page 36 the respondent attacks the holding of the Circuit Court of Appeals for the Second Circuit in *Allen Bradley Co. v. Local Union No. 3*, 145 Fed. (2d) 215.

In view of this attack and in view of the fact that an article in the Harvard Law Review for December, 1944 (p. 273) treats the present case and the *Allen Bradley* case as factually identical, we enumerate the following outstanding factual differences:

1. In the agreements of 1936 and 1938 in the present case there was no ban on articles merely because of geographical origin. The test was not source but wages and working conditions or union label (982, 896-901). On the other hand, in the *Allen Bradley* case the ban was against articles made outside the Metropolitan Area, irrespective of wages, working conditions or union affiliation.

2. The closed shops created by the agreements of 1936 and 1938 operated as against non-conforming employers anywhere,—including those in the Bay Area itself.

3. In the *Allen Bradley* case, according to the opinion (p. 218), "Local 3 promised" the local manufacturers and contractors "an exclusive market within the city so that they could name their own prices to

offset increased production costs". No such promise and no such purpose were expressed in the agreements of 1936 and 1938. Under those agreements the local signing manufacturers were not protected in the slightest from competition from other manufacturers wheresoever situated who actually did conform as to wages and working conditions.

4. In the *Allen Bradley* case, according to the opinion (p. 218), it was agreed that union members "should work only on switchboards of local manufacture by union shops". The contracts of 1936 and 1938 in the present case expressed no such agreement. Work was not confined to articles "of local manufacture by union shops".

5. In the *Allen Bradley* case there was a three-cornered agreement. The agreement was between three groups—manufacturers, contractors and union—and, according to the opinion (p. 218), it was agreed that "the contractors should have the sole power to buy materials for any job". In the present case, the agreement was solely between the union and the signatory employing manufacturers; and there was no agreement that contractors (or, indeed, anyone else) should have the sole power to buy materials for any job.

As regards the law for the present case, we find the following excellent statement in the aforesaid article in the *Harvard Law Review* of December, 1944 (p. 277):

"If the disputes were labor disputes, §20, as construed in recent Supreme Court cases, allows them to be carried on by means of refusals to work on non-union made materials. Such being the case, the fact that a particular employer capitulates and agrees to use no more of the offending material should not constitute a criminal conspiracy between employer and union. To permit the union to wage war but to stigmatize the signing of a treaty of peace as criminal behavior by the union, and by its defeated and now compliant adversary, would be grotesque. Nor

should the fact that such a surrender by a contractor would benefit local manufacturers as well as the local union affect the legal situation so long as the union's objective were its own economic advantage."

VI

✓ The respondent's own concessions illustrate why the decisions which it cites are wholly inapplicable.

U. S. v. Brims, 272 U. S. 549

There is little which we wish to add to our discussion of this case at page 48 of the Main Brief for the United Brotherhood and at pages 15 and 40 of the Main Brief for the Bay Counties District Council, *et al.*

Three months after that decision the Congress manifested its reaction by passing the appropriation bill of February 24, 1927, c. 189, Title 2, 44 Stat. 1194, which provided that no part of the appropriation for the enforcement of the anti-trust laws "shall be spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours, or for any act done in furtherance thereof not in itself unlawful". Here, obviously, were a congressional late not to extend prosecutions to activities arising from *bona fide* labor union demands and also a foreshadowing of the Norris-LaGuardia Act.

A case which arises from a labor dispute involving a union campaign for unionization and demand for higher and standardized wages is the antithesis of a conspiracy hatched by a group of local manufacturers to stifle competition from outside and to use union members as tools to that end.

The real nature of the *Brims* case is clearly disclosed in both the prevailing and dissenting opinions in *Bedford*

Cut Stone Co. v. Stone Cutters' Assn., 274 U. S. 37,—decided two months after the *Brims* case. Of the *Brims* case the prevailing opinion said (p. 52):

"In *United States v. Brims*, 272 U. S. 549, a criminal case, this court dealt with a combination of manufacturers, contractors and carpenters in Chicago, having for its object the destruction of the competition of nonunion mills in Wisconsin and elsewhere by the employment in Chicago of union carpenters only, with the understanding that they would refuse to install nonunion-made millwork."

Of the *Brims* case the dissenting opinion said (p. 64):

"Moreover the purpose of the combination was not primarily to further the interests of the union carpenters. The immediate purpose was to suppress competition with the Chicago manufacturers."

***The Second Coronado Case*, 268 U. S. 295**

This case militates against rather than for the respondent.

There the defendant unions destroyed coal mines for the very purpose of stopping the production and shipment in interstate commerce of non-union coal into other states where it would, by competition, tend to reduce the price of the commodity and thus affect injuriously the maintenance of wages for union labor in competing mines. The defendant unions were not employed in the plaintiffs' mines. As this Court said (p. 305):

"The only issue is whether the outrages, destruction and crimes committed were intentionally directed toward a restraint of interstate commerce."

Obviously, such "outrages, destruction and crimes" were not legitimate labor activities and were not licit means for the accomplishment of any licit labor objective. Since they were done in concert by various unions for the

very purpose of restraining interstate commerce, such criminal conduct was not immunized by any provisions of the Sherman Act, the Clayton Act or the Norris-LaGuardia Act. This Court, therefore, reversed a directed verdict for the defendants and remanded the case for a new trial.

But in the instant case, there was no such conduct and no use of unlawful means; and any intent or purpose on the part of the union defendants to serve their self-interest or to accomplish a labor objective was, as the respondent's brief concedes (pp. 2, 21), ruled immaterial.

The Borden Case, 308 U. S. 188

This was a *non-labor* case. It did not involve a labor dispute. The issue was as to the effect of the Capper-Volstead Act on a price-fixing combination engaged in by farm producers.

In that case we find a price-fixing agreement which was ruled to be illegal *per se* for lack of some immunizing statute. In the present case we find, in the last analysis, a closed-shop agreement immunized by several statutes but ruled by the courts below to be illegal *per se*.

VII

The respondent's brief has not justified the erroneous instructions and refusals to instruct concerning criminal liability of the unions for the acts of agents.

The District Court charged the jury that the unions would be responsible criminally for any act which an agent "assumed to do while performing duties actually delegated to him" (1137).

On the other hand, the Norris-LaGuardia Act (sec. 106, U. S. Code, Ann., Title 29) requires "clear proof of actual participation in, or actual authorization of", such act, or ratification "after actual knowledge thereof".

The word "actual", thus twice repeated, demands what is objectively real and excludes what is merely constructive or imputed.

If an agent is delegated to do an act, and such act is itself criminal, criminal responsibility attaches to the principal. But it would be an intolerable doctrine that a principal is liable criminally for any act which his agent "assumes" to do while performing lawful duties actually delegated. Delegation of authority to do lawful things certainly can not create criminal responsibility for an unlawful act which the agent may "assume" to do while engaged in the business of the principal.

The question here is not one of phrasing but of substance. The instruction given was obvious error, and very prejudicial. The instructions requested by the union organizations and individual member defendants were based upon the tests of the Norris-LaGuardia Act (1172-3). The same rule obtains under general principles of criminal law.

The instruction given is without precedent in any criminal case. The quotation from *Washington Gaslight Co. v. Lansden*, 172 U. S. 534, 544, was a civil case, involving only civil liability and the civil principle of imputed responsibility.

The case of *New York Central R. R. v. United States*, 212 U. S. 481, cited by the respondent, is a leading case for the proposition that a criminal statute, which by its terms adopts the civil test as to responsibility of a corporation for acts of an agent, may be constitutional in cases where the offense (as there charged) is the omission of a required act. That decision, when analyzed, works against the respondent on the question here involved. The Elkins Act, under which the case arose, 32 Stat. 847, provided in part as follows:

"In construing and enforcing the provisions of this section the act, omission, or failure of an officer, agent, or other person acting for or employed by any

common carrier, acting within the scope of his employment shall in every case be also deemed to be the act, omission or failure of such carrier as well as that of the person."

The equivalent is not to be found in the Sherman Act; and the offense here charged is not the omission of an act required by law, but the affirmative doing of a prohibited act.

In fact, culpability for what the agent "has assumed to do" reaches even beyond the vice of the instruction condemned in *United States v. International Fur Workers Union*, 100 Fed. (2d) 541, to the effect that a union would be criminally liable if its officers acted "upon behalf of the union". The latter instruction is at least not affirmatively inconsistent with the presence of actual authority or ratification.

The customary charge as to proof beyond a reasonable doubt is suggested by the respondent as a cure. But that charge could have no bearing upon an erroneous instruction predicated the principal's responsibility for a criminal act which an agent had "assumed" to do while performing lawful duties actually delegated.

For further discussion of this subject, see pages 52-58. of the Main Brief for the United Brotherhood.

March 5, 1945.

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No. [REDACTED]

U.S. Supreme Court, U. S.
FILED
6 APR 5 1946
CHARLES ELMORE BRIDLEY

IN THE

Supreme Court of the United States

October Term, 1944

UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA

Petitioner

against

UNITED STATES OF AMERICA

Respondent

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, on Reargument

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POINT II. Section 13(b) is merely definitional of a phrase occurring in Section 6 and in other sections of the Norris-LaGuardia Act.

It cannot confine, and was not intended to confine, the operation of Section 6 to civil cases. Any argument to the contrary would carry the logical conclusion that the decisions of this Court in *U.S. v. Hutcheson* and the cases following it were all erroneous.

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No. 9

IN THE

Supreme Court of the United States

October Term, 1944

UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.


APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF FOR PETITIONER,
UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA,
on Reargument**

On June 18, 1945, this Court ordered a reargument of this case (No. 666) and the companion cases, Nos. 667, 668, 674 and 675 in the October Term, 1944.

The memorandum of the Court read:

"These cases are ordered restored to the docket and assigned for reargument. Counsel are requested to discuss in their briefs and upon oral arguments the following questions:



"1. The scope of Section 6 of the Norris-LaGuardia Act in relation to prosecutions under the anti-trust laws.

"2. The scope of Section 6 in relation to Section 13 b.

"3. The scope of the words 'association or organization' appearing in Section 6, in that section's relationship to Section 13 b.

"4. Consideration of the court's oral charge and written charges requested and refused involving Section 6 in the light of objections and exceptions by each and all of the defendants and the state of the evidence on that issue as to each of them."

The Scope of This Brief

In this brief this petitioner addresses itself to each of these enumerated points in the order of their statement.

The petitioner also reaffirms the statements and arguments in its Main and Reply Briefs before this Court on the original argument; and it concludes the present brief with a discussion at page 51 of the subsequent decision of this Court in *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797.

The Petitioner, United Brotherhood

The Indictment alleges that the defendant The United Brotherhood of Carpenters and Joiners of America is an international trade union of carpenters and joiners in the United States and Canada, with a membership of approximately 350,000 persons and with its headquarters and general offices at Indianapolis, Indiana (318). The pertinent provisions of the Constitution and Laws of the Brotherhood are in evidence (459 *et seq.*).

According to this Constitution, the objects of the United Brotherhood are solely those approved by Section 2 of the Norris-LaGuardia Act. They are (460):

"To discourage piecework, to encourage an apprentice system and a higher standard of skill, to cultivate friendship, to assist each other to secure employment, to reduce the hours of daily labor, to secure adequate pay for our work, to establish a weekly payday, to furnish aid in cases of death or permanent disability, and by legal and proper means to elevate the moral, intellectual and social conditions of all our members, and to improve the trade."

By this Constitution the United Brotherhood is affiliated with the American Federation of Labor (462); its "jurisdiction shall include all branches of the Carpenter and Joiner trade" (461); and its local organizations, such as District Councils and Local Unions, are given a broad local autonomy. (See pp. 25-27; *post.*)

Under the General Constitution, the governing body of the United Brotherhood (subject only to action by its membership or its General Convention) is the General Executive Board which consists of a number of members, seven of whom are elected from different regions (558). The powers and duties of the General Executive Board (so far as here relevant) are (558):

(1) "Protect the property and interest of the United Brotherhood in such a manner as they may deem helpful and beneficial."

(2) Decide points of law, all grievances and appeals submitted to them in legal form and their decision shall be binding until reversed by the convention."

(3) "Authorize strikes in conformity with the constitution and laws of the United Brotherhood."

(4) "Defend the organization in any locality against . . . attacks."

(5) "Support such locality by levying a . . . assessment."

(6) "Enter into agreement with other organizations with reference to jurisdiction over work; or a general offensive or defensive alliance."

The General Convention meets every four years and is composed of delegates elected from all over the United States (559). Changes in the General Constitution can be made only by referendum vote of the members of the Brotherhood.

POINT I

Section 6 of the Norris-LaGuardia Act is applicable to prosecutions under the anti-trust laws. Its applicability to this criminal case has been conceded by the respondent before this Court.

Section 6 defines the substantive and evidentiary conditions requisite to a union's criminal responsibility under the anti-trust laws for the acts of an officer or agent.

Both because the Trial Court specifically refused to require the jury to find these requisites, and because it specifically instructed the jury that this petitioner could be found guilty according to the rules of imputed responsibility in civil cases, this petitioner's conviction must be reversed.

The Respondent's Concessions

At page 51 of its former brief before this Court, the respondent said:

"Section 6 of the Norris-LaGuardia Act also provides that a labor organization shall not be responsible for the unlawful acts of its agents unless upon 'clear proof' of actual authorization. This requirement, *which applies to civil as well as to criminal cases*, is, of course, no more stringent than the rule that guilt in a criminal case must be shown beyond a reasonable doubt." (The italics are ours.)

And again, at page 20 of its former brief, the respondent said, concerning a charge by the Trial Court as to union responsibility in this criminal case:

"This instruction correctly applies the principles established in the *Coronado* cases and embodied in Section 6 of the Norris-LaGuardia Act."

Indeed, throughout the respondent's former brief, it continuously and consistently assumed the application of Section 6 of the Norris-LaGuardia Act to the present case, and argued merely as to its meaning and as to whether the charge of the Court met its requirements. (See pp. 42-51 of that brief.)

The Hutcheson Case

At the threshold stands the decision of this Court in *U. S. v. Hutcheson*, 312 U. S. 219 (1941). It established the following principles:

1. The Norris-LaGuardia Act must be deemed an integral part of the anti-trust laws. The Sherman Law, Section 20 of the Clayton Act and the Norris-LaGuardia Act must be read together "as a harmonious text of outlawry of labor conduct" and as "interlocking statutes" (pp. 231, 232).

2. The Norris-LaGuardia Act "immunized trade union activities as redefined" therein, and removed all such activities "from the taint of being a 'violation of any law of the United States', including the Sherman Law" (p. 236).

3. Although the Norris-LaGuardia Act dealt explicitly with injunctions in labor disputes, it is not possible "to say that that which on the equity side of the court is allowable conduct may in a criminal proceeding become the road to prison" (p. 234).

4. The Norris-LaGuardia Act must be deemed a disapproval of *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, and *Bedford Cut Stone Co. v. Journey-men Stone Cutters' Assoc.*, 274 U. S. 37 (p. 236).

These principles and this decision have been repeatedly reaffirmed by this Court:

U. S. v. Building & Construction Trades Council,
313 U. S. 539;

U. S. v. United Brotherhood of Carpenters & Joiners of America, 313 U. S. 539;

U. S. v. International Hod Carriers and Common Laborers' District Council, 313 U. S. 539;

U. S. v. American Federation of Musicians, 318 U. S. 741;

Allen Bradley Co. v. Local Union No. 3; 325 U. S. 797;

Hunt v. Crumboch, 325 U. S. 821, 824.

In the last named case this Court, in stating the place of the Norris-LaGuardia Act in the anti-trust laws, said (p. 806):

"*United States v. Hutcheson*, 312 U. S. 219, declared that the Sherman, Clayton and Norris-LaGuardia Act must be jointly considered in arriving at a conclusion as to whether labor union activities run counter to the Anti-trust legislation. Conduct which they permit is not to be declared a violation of federal law. That decision held that the doctrine of the *Duplex* and *Bedford* cases was inconsistent with the congressional policy set out in the three 'interlacing statutes'."

Section 6

The background furnished by these principles and these decisions clarifies the answer which must be made to the first point designated by this Court for reargument.

Section 6 of the Norris-LaGuardia Act reads:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual partici-

pation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

No section of the Norris-LaGuardia Act gives greater support than does this Section 6 to the now settled law that that Act is not, and cannot be, confined in its legal effect to a mere limitation of power to grant injunctions.

No other section of that Act contains so clearly an express and explicit purpose, when interlaced with Section 20 of the Clayton Act, to be applicable to any action (civil or criminal) under "any law of the United States" in "any court of the United States", and to lay down both the substantive and the evidentiary principles which in any such action shall condition the responsibility of a defendant association or organization participating or interested in a labor dispute, where responsibility is sought to be imposed by reason of the unlawful acts of individual officers, members or agents.

Obviously, the legislative intention was to shift the condition of such responsibility from the mere fact of agency, as in a civil case, to the requirement of actual personal guilt, as established by the degree of evidence required by the section, to wit: "clear proof" of actual complicity.

In other words, Section 6 presents two comprehensive statutory declarations applicable to any action (civil or criminal) under any anti-trust law of the United States against a labor union "participating or interested in a labor dispute". Those declarations are:

1. The substantive principle that a union as such is not answerable for the unlawful acts of an agent solely by reason of the agency or the intent of the agent, but only by reason of actual complicity on its own part.

2. The evidentiary rule that such personal complicity cannot be deemed established "except upon clear proof of actual participation in, or actual au-

thorization of, such acts, or a ratification of such acts after actual knowledge thereof."

"association or organization"

There can be no question that the United Brotherhood is an "association or organization" within the meaning of Section 6. The Norris-LaGuardia Act does not use the term "union". It uses the broader and more comprehensive words "association" and "organization". Both these terms are set forth in the declaration of public policy in Section 2 and are thereafter carried forward through various subsequent sections of the Act. This Court in deciding *U. S. v. Hutcheson, supra*, assumed—and necessarily assumed—that the United Brotherhood was an association or organization within the meaning of that Act. The indictment herein describes it as "a voluntary, unincorporated association of individuals" (18).

Section 6 extends its conditional immunity to two classes. The first class is the individual "officer or member of" the association or organization. The second class is the association or organization itself. Upon neither class is criminal responsibility to be imposed by any court of the United States except where actual personal complicity has been established by clear proof. This conditional immunity is universally applicable when the association or organization is "participating or interested in a labor dispute."

"actual"

There can be no mistaking the legislative intent behind the three-fold emphasis on the word "actual".

No room whatever was to be left for mere imputation or for constructive responsibility. The section insists upon the factual and the specific, as distinct from the implied or the theoretical. It transcends any particular procedure or any particular form of action. It is wholly objective and conditioned only by reality.

The standard definition of the word "actual" is entirely free from legal verbalism and is accurately given as follows in Webster's International Dictionary (2d ed.) Unabridged:

"Existing in act or reality; really acted or acting or being; in fact; real".

"the unlawful acts"

So, likewise, in Section 6 the words "the unlawful acts" are without any limitation or hint of limitation.

They are completely comprehensive, and are the counterpart of the reference in Section 20 of the Clayton Act to any "violation of any law of the United States", including the Sherman Law. They are not limited to civil torts or to any particular causes or forms of action. They apply automatically if the act under trial by the court is "unlawful".

Webster's International Dictionary defines the word "unlawful" as follows:

"Acting contrary to, or in defiance of, the law; disobeying or disregarding the law."

"responsible or liable"

So, also, as to the phrase "held responsible or liable in any court of the United States".

Here, again, each and every word is instinct with comprehensiveness.

The word "any" excludes limitation. It is the identity of the court as a court of the United States and not the particular jurisdiction being momentarily exercised that determines the applicability of the phrase.

Neither the word "responsible" nor the word "liable" is a technical word of legal art. Legal verbalisms were avoided and words of common and general meaning and application were chosen, for the very purpose of escaping technical restriction.

Webster's International Dictionary, in comparing the word "responsible" with others of similar meaning, describes it as: "the most general term", and gives the following definition:

"Liable to respond; likely to be called upon to answer; accountable; answerable; amenable."

The same dictionary defines the word "liable":

"Bound or obliged in law or equity; responsible; answerable."

Clearly, both terms comprehend the general idea of accountability or answerability before the law in the matter of conduct,—accountability or answerability not to some particular body of law or by reason of some particular conduct, but rather for conduct as lawful or unlawful according to the general body of law.

One is quite as "liable" to suit by the sovereign for an act prohibited by the criminal law as one is "liable" to suit by an individual for an act prohibited by the civil law. In *People v. Driessen*, 178 Mich. 118, the court specifically held that the term "liability" included liability to criminal prosecution. To quote (p. 124):

"It is next urged by respondent that the saving clause in Act 277, Public Acts of 1911, does not permit the institution of a prosecution under the old law for an offense committed under the old law after the new law went into effect. * * * It may be admitted that the saving clause is not happily framed to express the undoubted legislative intent, but we are of opinion that it is sufficient. 'All rights and liabilities existing, acquired, or incurred at the time this act takes effect are hereby saved.' Among those 'rights' is the right of the people to prosecute, and among the 'liabilities' is the liability of respondent to be prosecuted."

The subtitle

The same comprehensiveness and lack of limitation is manifest in the subtitle prefixed to this section in the U. S. C. Ann. (Title 29, Sec. 106). This subtitle reads:

"Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents."

The repealer

Comprehensiveness also permeates the repealing clause with which the Norris-LaGuardia Act terminates (Sec. 115, U. S. C. Ann.). It reads:

"All acts and parts of acts in conflict with the provisions of Sections 101-115 of this title are hereby repealed."

In this repealer there is no reservation or saving clause. It is a simple, absolute nullification. It manifests a plain intent to make a complete substitution and to establish new declarations in accordance with the authoritative statement of purpose and policy declared in Section 2 (Sec. 102, U. S. C. Ann.) of the Act, calling for freedom and equality on the part of labor "in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection".

The same Section 2 declares that, in order to provide a full charter of freedom for organization and concert of action in mutual aid or protection,

"the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are hereby enacted".

The basic objective

Thus, the Norris-LaGuardia Act itself admonishes that its basic objective is to eliminate all factors tending to create a position of inequality between the parties to em-

ployment (particularly in the event of a labor dispute), and hence tending to interfere with complete freedom of contract.

It is inconceivable that Congress regarded civil liability as such a factor and yet did not regard criminal liability as an equal or greater deterrent to freedom of contract.

It would indeed be a ~~strange~~ rule of evidence which would hold that a person could be held liable civilly or enjoined in equity as responsible for the commission of unlawful acts by an agent only on clear proof "of actual participation" therein, and yet could be convicted criminally for the same acts on a lesser degree of proof or on a mere showing of an agency relationship.

The Senate Report

If, notwithstanding all the foregoing, there could still be any doubt of the effective relation of Section 6 of the Norris-LaGuardia Act to criminal prosecutions under the anti-trust laws, such doubt would conclusively be removed by reference to the authoritative statements in Congress at the time when the section was enacted.

Thus, to quote the Report of the Senate Committee on the Judiciary (drawn by Senator Norris) in its sectional analysis of Section 6 (Report No. 163, Calendar No. 176, 72d Congress, 1st Session, Feb. 4, 1932, p. 19):

"In most cases where strikes occur involving a great many employers and employees and covering a comparatively large territory, there are often unlawful acts committed in the way of injury to property or to persons. It is not the intention of the bill to *protect anybody*, whether he be employer or employee, *from punishment* for the commission of unlawful acts either as against property or persons. But no person or organization should be held *thus liable* unless he or it caused the unlawful act or participated in it or ratified it. . . .

"Opposition to this section has been voiced on the ground that it seeks to establish a 'new law of agency'.

In the first place, this section is concerned especially with establishing a rule of evidence. There is no provision made relieving an individual from responsibility for his acts, but provision is made that a person shall not be held responsible for an 'unlawful act' except upon 'clear proof' of participation or authorization or ratification. Thus a rule of evidence, not a rule of substantive law, is established. 'The general power of every legislature to prescribe the evidence which shall be received and the effect of that evidence in the courts of its own government,' has been repeatedly upheld by the Supreme Court. (See *Fong Yue Ting v. U. S.*, 149 U. S. 698, 749; *Bailey v. Alabama*, 219 U. S. 219, 238.)"

And in further discussion of Section 6 the same Senate Report said (p. 20):

"But the argument is made that a man is held legally responsible for the acts of his agents taken in due course of employment. This argument is evidently based upon a doctrine of the civil law of negligence. It has no application to the criminal law. . . .

" . . . It may be accepted that if a group associated in common activities becomes controlled by a lawless majority, it may be necessary for law-abiding men to dissolve their association with law-breakers; but the doctrine that a few lawless men can change the character of an organization whose members and officers are very largely law-abiding is one which has been developed peculiarly as judge-made law in labor disputes, and it is high time that, by legislative action, the courts should be required to uphold the long-established law that *guilt is personal* and that men can only be held responsible for the unlawful acts of associates because of participation in, authorization or ratification of such acts. As a rule of evidence, clear proof should be required, so that *criminal guilt* and *criminal responsibility* should not be imputed but proven beyond reasonable doubt in order to impose liability."

This language—particularly the last sentence quoted—shows conclusively that the draftsmen of the Norris-LaGuardia Act understood that the words “responsible” and “liable” in Section 6 were both applicable to an issue of “criminal guilt” and that the Congress was expressly advised that these draftsmen so understood and intended.

That this Senate Report is weighty evidence of the legislative intent as to Section 6 has recently been held by this Court in construing under somewhat similar circumstances the true meaning of Section 8 of the same Act (*Brotherhood of Rail Road Trainmen v. Toledo, Peoria & Western Railroad*, 321 U.S. 50, 59, 60).

The Rulings of the Trial Court

The Trial Court disregarded all these considerations and principles.

Instead, it did three things,—all basically erroneous and decisively prejudicial:

- (a) It treated Section 6 as wholly inapplicable to the case and as irrelevant to any matter of substance or of evidence before the jury.
- (b) It directed the jury to determine the guilt of this petitioner (the United Brotherhood) according to the rule in civil cases for determining a principal's responsibility,—to wit, the ordinary civil rule of agency.
- (c) By so doing, it deprived this petitioner of the principle applicable in all criminal cases, quite irrespective of Section 6 of the Norris-La Guardia Act, that guilt must be actual and personal and that the requisite participation must be established beyond reasonable doubt.

(1) Thus, on the issue of the United Brotherhood's criminal responsibility, the Trial Court refused to instruct the jury in accordance with the requisite conditions ex-

pressed in Section 6. Not only was its charge devoid of any reference to such section or to the requisites expressed therein, but the Trial Court specifically refused this petitioner's Request 56, which reproduced as follows the phraseology of Section 6 (1171, 1173):

"You are instructed that no labor union or organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find (896) upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof."

The Trial Court also refused, on the issue of the United Brotherhood's criminal responsibility, to instruct the jury in accordance with the principles of the common law governing such subject matter in a criminal prosecution. Specifically, it refused this petitioner's Request 55, which read as follows (1171, 1172):

"You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act."

Instead, the Trial Court bound the jury to determine this petitioner's guilt or innocence according to the rule governing a principal's imputed responsibility in civil cases. Thus it charged the jury (1138):

"You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents."

Pursuing this assumed analogy, the Trial Court further charged (1137):

"The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation."

Not only was this instruction the converse of the requirements of Section 6, but the Trial Court went further in imputing responsibility than even the rule in civil cases, for this last instruction was tantamount to telling the jury that an agent can make his principal a party to a crime merely if he has "assumed to do" a criminal act "while performing duties actually delegated to him." This is an unheard-of doctrine. If it were sound, then any principal would be constantly in jeopardy of jail by reason of any criminal act that his agent might have "assumed to do" in the supposed performance of the agency. No matter how innocent or legitimate the agent's instructions or his delegated duties, his principal would become a criminal offender if the agent "assumed" to help out by perpetrating a crime.

(2) A secondary and corollary error of the Trial Court was its ruling on the subject of this petitioner's criminal responsibility for any unlawful acts of its local unions or district councils. Obviously, this petitioner was vitally concerned to have the jury instructed that it (the United Brotherhood) was not responsible *ipso facto* or on any principle of imputation for any criminal acts of any of its local unions or district councils. Its following request on this subject would seem elementary, but it was refused (Request 57, pp. 1171, 1173):

"You are instructed that an international trade union, that is, the international body, is not responsible for the acts of a district organization or union affiliated with and chartered by it except as such

international body expressly authorizes the act of the local union or association. The International Brotherhood of Carpenters and Joiners of America cannot be found guilty in this case unless you find that it authorized acts to be done, or performed such acts with the intent of restraining interstate commerce pursuant to a conspiracy with the employer-defendants to act as the instrument of the employers to suppress competition."

This petitioner excepted to all the foregoing instructions and refusals to instruct; and it duly assigned error (1155-6, 1158, 1529, 1530-3, 1598, 1602).

We submit that such rulings were basically erroneous and decisively prejudicial.

The Coronado and other cases

In view of the clear terms of Section 6, citation of judicial precedents would seem unnecessary; but one peculiarly applicable *a fortiori* is *Coronado Co. v. United Mine Workers*, 268 U. S. 295, decided before the enactment of the Norris-LaGuardia Act.

This *Coronado* case was a *civil case*. The plaintiff sued to recover damages for an alleged conspiracy by the defendants in violation of Section 1 of the Sherman Act. In the Trial Court there was a directed verdict and judgment for the defendants which was affirmed by the Circuit Court of Appeals. The Supreme Court affirmed this determination in the case of the International Union of Mine Workers of America, but reversed it in the case of the defendant local unions and of the defendant individuals who were officers of the International and of the local unions,—thus drawing a sharp distinction between, on the one hand, the criminal liability of an International Union and, on the other hand, the criminal liability of its officers and local unions and their officers.

In that case one James K. McNamara, who was himself a defendant and secretary of one of the defendant

local unions, had turned state's evidence and had testified that he had had talks with the defendant John P. White, who was President of the International, in which talks White instructed him to do various illegal and violent acts to prevent coal from being mined and sent into interstate commerce, and promised that McNamara and those who assisted him would be paid by the International Union.

White also, at various times, made speeches of "earnest approval" of the strikes, and reported on them to the International Board. Editorials in the International's magazine defended them (p. 300).

Nevertheless, and notwithstanding that the case before it was merely a *civil case*, the Supreme Court held that these acts by the President of the International and the accompanying acts of conspiracy and violence by the local unions and their officers and members did not bind and render liable the International. The Supreme Court quoted from the General Constitution of the United Mine Workers of America certain provisions which closely resemble the General Constitution of the United Brotherhood of Carpenters and Joiners of America, and then said (300):

"It does not appear that the International Convention or Executive Board ever authorized this strike or took any part in the preparations for it or in its maintenance, or that they ratified it by paying any of the expenses."

Peculiarly applicable also is the decision in *United States v. International Fur Workers Union*, 100 F. (2d) (C. C. A. 2) 541; certiorari denied 306 U. S. 653.

In that case, in a prosecution under Section 1 of the Sherman Act, a verdict of guilty was rendered against an international union (International Fur Workers Union of the United States and Canada) and against a number of its local unions and certain officers of the international and of the local unions. This verdict against the international union was reversed by the Circuit Court of

Appeals for the very error that occurred in the present case. To quote (547):

"But an officer of an unincorporated association, no more than an officer of a corporation, is not authorized merely by virtue of his office to make his principal a party to an unlawful conspiracy. See *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 45 S. Ct. 551, 69 L. Ed. 963; *Hill v. Eagle Glass & Mfg. Co.*, 4 Cir., 219 F. 719, modified on other grounds in *Eagle Glass & Mfg. Co. v. Rowe*, 245 U. S. 275, 38 S. Ct. 80, 62 L. Ed. 286. All that the court said on this subject was that if the individual defendants did the things charged against the unions 'upon behalf of the unions,' they might be found guilty along with the individuals. To this the appellant unions excepted. It was erroneous; it excluded the issue whether the unions had authorized or ratified what their officers did upon their behalf. For this reason the conviction of each of the labor union appellants must be reversed."

See also:

Truck Drivers' Local No. 421 v. United States,
128 F. (2d) (C. C. A. 8) 227;

Barker Painting Co. v. Brotherhood of Painters,
15 F. (2d) (C. C. A. 3) 16, 18;

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688;

Donnelly Garment Co. v. Dubinsky, 55 Fed. Supp.
587, 594-5.

POINT II

Section 13(b) is merely definitional of a phrase occurring in Section 6 and in other sections of the Norris-LaGuardia Act.

It cannot confine, and was not intended to confine, the operation of Section 6 to civil cases. Any argument to the contrary would carry the logical conclusion that the decisions of this Court in *U. S. v. Hutcheson* and the cases following it were all erroneous.

The application of Section 13(b) to this case has been conceded by the respondent.

(1) Section 13 (~~U. S. C. A.~~ §113) is entitled: "Definitions of terms and words used in chapter"; and it declares the definitions to be applicable to all sections of the Act.

Section 13(b) reads:

"A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation."

(2) The respondent has conceded that in this very case and for the purposes of it, the United Brotherhood is within this definition.

Thus, in its former brief before this Court, the respondent expressly conceded that it had the burden of showing that the agreements of 1936 and 1938 were violative of Section 1 of the Sherman Act, notwithstanding that (p. 21):

"it (such agreement) was entered into as an incident to a dispute between employers and employees concerning terms or conditions of employment or that the union group participated in the agreement for the purpose of promoting their own self-interest."

And with further frankness and inevitability, the respondent's former brief also conceded (p. 26):

"It may be conceded that the validity of the convictions of the petitioners who stood trial must be tested upon the assumption that the agreement not to purchase low-cost and low-wage-scale millwork grew out of such a dispute (between employers and employees concerning terms or conditions of employment)."

Still further narrowing the basic issue of law, and referring directly to Section 13(b), the respondent's former brief also stated and conceded (p. 28) that, within this definition in the Norris-LaGuardia Act, the union defendants were engaged in a labor dispute not only with the employers in the Bay Area but also with the "out-of-State" employers who imposed less favorable wages and working conditions. To quote this important and realistic concession (p. 28):

"It is true that under the broad definition of parties to a labor dispute contained in Section 13 of the Norris-LaGuardia Act, the out-of-State producers of millwork would be parties to a labor dispute between the Bay Area manufacturers and their employees. It is also true that Section 20 (of the Clayton Act) immunizes 'ceasing to patronize' a party to a labor dispute or 'recommending, advising or persuading others . . . so to do'."

(3) The phrase in Section 13(b), "if relief is sought against him or it," does not and cannot confine Section 6 by relation or construction to civil cases only.

In a criminal case relief is demanded on the part of the sovereign for an offense against its laws, and the form of

the relief is a judgment which shall not only punish but also deter, restrain and even confine the defendant, and tend to deter others. The relief sought is vindication of the law, the protection of society, and the prevention by fine or imprisonment or both of the continuance or resumption of the offending conduct. To quote the time-honored and stereotyped conclusion of the instant indictment presenting the defendants for the Court's judgment because of conduct (37):

"against the peace and dignity of the United States and contrary to the forms of the statute of the United States in such cases made and provided."

In other words, in a criminal prosecution, the relief sought is the bringing of the accused to justice; and, if the prosecution is successful, the relief obtained is the judgment and sentence of conviction. In a criminal action the sovereign is the "plaintiff" *eo nomine*; and it comes into court for judgment and redress, quite as truly as does a private suitor who institutes a civil action.

Thus the conclusion is inescapable that the words, "if relief is sought against him or it", are not restricted to a civil case but are applicable to any "case" as that term is used in Section 13(a), which begins:

"A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation, etc."

This term, "a case", is unrestricted to any particular class or classes of causes of action, whether civil or criminal. It embraces any action where a plaintiff accuses a defendant of unlawful conduct and seeks judgment and redress therefor.

(4) If any other interpretation were to be given to these words in Section 13(b), then the very basis of the decision of this Court in *U. S. v. Hutcheson, supra*, and the

decisions following it, would be nullified; for the phrase defined in Section 13(b) occurs in various other sections of the Norris-LaGuardia Act and is part of its standard, recurrent phraseology and is essential to the circumference of the Act itself.

If, therefore, there were anything in the definition which would exclude all but civil cases, then all but civil cases would be excluded from the operation of the Act itself, and conduct which would be remediless in a civil case would still "in a criminal proceeding become the road to prison": (*U. S. v. Hutcheson*, 312 U. S. 219, 234-5).

(5) Certainly the legislative framers of the definition in Section 13(b) never dreamed that they were framing a procedural limitation and a differentiation between cases or causes of action, and not, on the contrary, a substantive enlargement and a new and greater inclusiveness.

We have but to quote the Report of the House Committee on the Judiciary recommending this enactment and submitted by Mr. LaGuardia (Report No. 669, March 2, 1932, p. 10):

"SECTION 13: Section 13 contains definitions which speak for themselves. It is hardly necessary to discuss them other than to say that these definitions include, as hereinabove stated, a definition of a person participating in a labor dispute which is broad enough to include others than the immediate disputants and thereby corrects the law as announced in the case of *Duplex Printing Press Co. v. Deering*, *supra*, wherein the Supreme Court reversed the circuit court of appeals and held that the inhibition of section 20 of the Clayton Act only related to those occupying the position of employer or employee and no others. The Supreme Court held to the same effect in the case of the *American Steel Foundries Co. v. Tri-City Central Trades Council*, *supra*."

POINT III

The words "association or organization" in Section 6 and the word "association" in Section 13(b) are equally inclusive of the United Brotherhood.

What we have said under the preceding Point anticipates and presents our response to the third point in this Court's order for reargument.

It will be observed that Section 13(a) uses the words "association" and "organization" interchangeably. Indeed, the primary and general definition of the subject matter to which the Act applies immunity is contained in Section 13(a), which defines "a case" involving or growing out of a labor dispute. Section 13(b) is merely ancillary to that primary and general definition. It is a corollary and an abbreviated repetition,—carrying over the subject matter of such "a case" to the "person or association" who is a party to the case and has the participation or interest specified.

Only through "a case" in court can a union be "held responsible or liable" for the unlawful acts of individual officers, members or agents. Where the "case" involves or grows out of a labor dispute as defined in Section 13(a), the conditional immunity granted by Section 6 is rendered applicable to every person or association who is participating or interested in such labor dispute, and who is sought to be "held responsible or liable" in that case.

Section 13(b) merely makes the already obvious conclusion express.

POINT IV

The oral charge of the Trial Court as to the criminal responsibility of the United Brotherhood, and the Court's refusal of written requests for instructions as to Section 6 of the Norris-LaGuardia Act, when considered in the light of objections and exceptions by this defendant and the state of the evidence as to it, rested on such basic error as to necessitate a reversal.

In the case of the United Brotherhood, such reversal should direct a dismissal of the indictment, or at least a new trial, for there was no clear proof of actual complicity on its part, as required by Section 6.

The oral charge by the Trial Court as to criminal responsibility on the part of the United Brotherhood, and the Trial Court's refusals of its written requests for instructions involving Section 6 of the Norris-LaGuardia Act, have already been discussed at pages 14-17, *supra*.

The effect of such charge and refusals to charge was not only to deny the applicability of Section 6 but actually to impose something even less than the rule of imputed responsibility in *civil* cases.

The United Brotherhood excepted to all the oral charges on this subject and to the refusal of its requests for instructions; and it has duly assigned error (1155-6, 1158, 1529, 1530-3, 1598, 1602).

We come therefore to a consideration of the state of the evidence as to any criminal responsibility on the part of the United Brotherhood under the first Count of the Indictment herein,—the only Count which went to the jury (111, 139).

Under the General Constitution of the Brotherhood, the supreme authority resides in the members of the Brotherhood who elect delegates to the Convention and must pass, by referendum vote, on proposed changes in

the General Constitution. Subject, however, to the membership and to the General Convention, the governing body of the Brotherhood is its General Executive Board. At page 3, *supra*, we have enumerated the powers of that Board.

There is no proof—not even a claim—that the General Executive Board or General Convention or the membership of the Brotherhood ever took any action whatsoever on any portion of the subject matter contained in Count 1 of the Indictment. Indeed, according to that Count, the United Brotherhood was expressly joined as a defendant on the principle of imputation, to wit, “as advisor to, supervisor of, and governing body for carpenters’ local unions and carpenters’ district and state councils in the United States & America, including the Bay Counties District Council of Carpenters” (par. 14, p. 18),—a principle of inclusion expressly excluded by Section 6 of the Norris-LaGuardia Act.

Furthermore, by the General Constitution of the United Brotherhood the various District Councils and Local Unions are given broad local autonomy and right of self-government and independent action. To quote (461):

“To subordinate local or auxiliary unions, district, state and provincial councils the right is conceded to make all necessary laws for local and district, state and provincial councils which do not conflict with the laws of the international body.

“In cases where local central bodies are formed, local or auxiliary unions, district, state and provincial councils shall have power to enforce the laws of such bodies, provided such laws do not conflict with the laws of the United Brotherhood of Carpenters and Joiners of America.”

And, on the subject of local autonomy, the Constitution also provides (461):

“Section 25. Local unions where no district council exists shall have the power to make by-laws and

trade rules for their government and the members of the United Brotherhood working in their jurisdiction, which shall in no way conflict with the constitution and international laws of the United Brotherhood, state council or provincial council."

As to strikes, the Constitution also emphasizes local autonomy, for it provides (462):

"Section 59. Job or shop strikes are to be conducted on rules made by the district council or the local union where a district council does not exist. A trade demand inaugurated by a local union affiliated with a district council must be endorsed by the district council and submitted to the general executive board for their sanction.

"Where a district council exists it shall adopt rules for the government of strikes and lockouts in that district, as provided for in the constitution and laws of the United Brotherhood."

SUBDIVISION I

The United Brotherhood was not a contracting party in any of the main agreements.

The United Brotherhood was not a contracting party in any of the contracts of 1935, 1936, 1938 and 1939 (Ex. N, p. 754; Ex. 131, p. 280; Ex. 132, p. 288; Ex. 172, p. 535).

Moreover, the United Brotherhood was not a party signatory to the Arbitration Agreement of 1938 and did not participate in the arbitration proceeding (Ex. R, p. 768).

The 1939 contract contains none of the clauses which the prosecution has challenged as violative of the Sherman Law (Ex. 172, p. 535); and there is nothing therein which can by any possibility be argued to be violative of that Law. There is the following at the end thereof (544):

"Witnessed by

J. F. Cambiano—Gen'l. Representative, witness"

Also the final paragraph of the 1939 contract read (544):

"4. The signature of the International Officer of the United Brotherhood of Carpenters and Joiners of America affixed hereto signify the approval of this contract by the International and further binds the International to approve only such mill and cabinet employer and employee Agreements entered into in the six (6) counties herein mentioned as are uniform with respect to rates of wages, hours and working conditions throughout the six (6) counties."

All these agreements were purely local affairs, and the clause above quoted in the 1939 contract only confirms the contention of the defense that these contracts related to the local situation and had local objectives,—among which was the primary and wholly beneficial objective of preserving uniformity in rates of wages, hours and working conditions throughout the six counties constituting the Bay Area.

This Area was a single economic unit,—a sort of metropolitan area united by water, rail and road. To have had varying scales of wages, hours and working conditions in such an Area would have meant chaos in the industry therein. The local unions had a primary right to push to a successful conclusion in 1938 their struggle to bring all the counties up to the level of wage and working conditions established in the County of San Francisco by the 1936 contract. (*Amer. Foundries v. Tri-City Council*, 257 U. S. 184, 209).

SUBDIVISION II

Throughout the period involved the General Office of the United Brotherhood repeatedly ruled that articles bearing the union label must be installed in the Bay Area irrespective of wage-scale.

Because of the importance of these official determinations to the position of the United Brotherhood in this case, we wish to clinch it by quoting from the correspondence.

In the first part of August, 1938, Mr. Edwards, representing the Alameda County employers who were refusing to be bound by the Arbitration Award, sent to the General President (Wm. L. Hutcheson) at Indianapolis the following telegram (452, 454):

"Can millwork carrying Brotherhood of Carpenters' Label be discriminated against because of being made at a wage lower than called for in local agreement. We know your policy but we want a positive answer today. (Signed) Edwards."

To this telegram, Indianapolis sent to Mr. Edwards the following reply (454):

"Muir enroute to San Francisco. Millwork carrying Brotherhood Label should not be discriminated against."

S. P. MEADOWS
For the General President."

This response was in accordance with the provisions of the General Constitution which required that materials bearing the union label be recognized "in any part of the jurisdiction of the United Brotherhood" (459-461).

Next, the prosecution witness, Louis D. Wine, who was Special Agent for the Federal Bureau of Investigation, testified in response to prosecution's counsel that on March

22, 1940 he had a conversation with the defendant Walter C. O'Leary, who had said that his local union would object to lumber coming into the Bay Area (217-8). "unless it was made in accordance with the current labor wage scale and according to current union working conditions." The witness then testified (221):

"* * * I mentioned to him Mr. Hutcheson, the president of the International (the United Brotherhood), I said, 'How would he feel about that?' He said, 'Mr. Hutcheson's statement to the union was, the union label should be considered the same as legal tender, the same as a five-dollar bill; *good any place in the United States.*'"

This testimony was confirmed by the defendant O'Leary (982).

Further confirmation was furnished by the letter written by the defendant David H. Ryan, secretary of the Bay Counties District Council, to President Hutcheson on December 6, 1938 (Ex. 41-4), wherein Mr. Ryan quoted the aforesaid telegram of August, 1938, from the General Office, and reported as to what he had stated at a conference with the Employers covering articles bearing the union label (453):

"I pointed out to the Employers that copies of this letter carrying this information were sent to home-builders, contractors, architects, and others, broadly advertising the fact that that kind of millwork could be brought in and would be installed, and that moreover, William Hague, Secretary of the Associated General Contractors, in his bulletins sent to all of his membership, drew their attention specifically to the fact that they could bring such material in, and that it had to be installed by Union carpenters. I stated to the representatives of the San Francisco Employers * * * that the General Office, in my presence in a meeting in their office, stated that woodwork bearing the label *would have to be installed regardless of the scale paid in its manufacture.*" (Emphasis supplied.)

The defendant Cambiano gave like testimony (1110).

Still further proof is furnished by a letter dated April 7, 1939, from ~~M.~~ M. A. Hutcheson, First General Vice President, to Mr. D. P. Ryan, Secretary of the Bay Counties District Council. This letter reads (Exhibit G, p. 557):

"Dear Sir and Brother:—

"We are in receipt of a letter from Local Union No. 1689 of *Tacoma, Washington*, asking us to communicate with your Council and advise that their members are working for the Tacoma Millwork & Supply Co. under agreement and have the use of our label for their products, therefore, any material coming into your community from this firm bearing our label would be manufactured under consideration satisfactory to our organization.

"Yours fraternally,

"M. A. HUTCHESON,
First General Vice President."

How, we ask, can the General Office in Indianapolis be deemed to be participating in the conspiracy charged here when/as shown by this very letter, written as late as April 7, 1939, it was directing the local unions in the Bay Area to install millwork manufactured in *the State of Washington* because it bore the union label, *even though the wage scale was less?*

SUBDIVISION III

The contract of 1938 was amended in the Fall so as to remove any question that articles bearing the union label might not be installed in the Bay Area, irrespective of wage-scale.

The result of these orders of the General Office was that the contract of 1938, effective June 15, 1938, was amended in the Fall of that year so as to insure conformity with such orders (Ex. 132, pp. 288, 291-5).

The circumstances of this amendment were testified to by the defendant Ryan as follows (897): In the latter part of 1938 General President Hutcheson, at the St. Francis Hotel in San Francisco, was shown by Mr. Ryan the contract of 1938, and President Hutcheson inquired whether paragraph 17 meant that the local unions would not install "union-made millwork because it is not made at the same wage scale" (897). To quote Mr. Ryan (898):

"Mr. Hutcheson asked what was meant and I told him, that don't mean to keep out union-made material. He said, in effect, 'That is what they will say you are doing.' . . .

" . . . He objected to that. I don't know what he said about it, but he said anyway it was out. He was the boss and that settled it."

The consequent amendment of the 1938 contract seems to have been verbally agreed to about October 18, 1938, but not put in writing formally until December 19, 1938, as follows (291-3, 898):

"17. In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Car-

penters and Joiners of America, or employers of members of the United Brotherhood of Carpenters and Joiners of America."

Mr. Ryan then forwarded this amendment to the General Office (899), and under date of December 23, 1938, the First General Vice-President (M. A. Hutcheson) sent him an approval thereof (455).

In the 1939 contract, executed on August 10, 1939 (Ex. 172, 534-45), there was no such paragraph at all as the aforesaid paragraph 17 either in its original or in its amended form.

The right of union members to refuse to work on articles manufactured under conditions deemed "unfair" is elementary both at common law and under the federal statutes and constitution. (*Hunt v. Cramboch*, 325 U. S. 821, 824.)

SUBDIVISION IV

The United Brotherhood left to the local autonomy of the local unions the matter of working out a settlement with the employers.

Furthermore, as explicitly stated in the letter of the General Office to Mr. Ryan dated December 23, 1938 (455), the United Brotherhood was leaving to the local autonomy of the local unions in the Bay Area the working out of a settlement with the local Employers, and was only taking the position "that wages, hours and conditions would all be uniform for the Six Counties" of the Bay Area (455, 1111).

Obviously, such uniformity was appropriate and indeed necessary in this Area which constituted a geographic and economic unity. The local unions in that Area had a common interest in bringing up their wage scales to a common level. No interstate commerce was involved; and

labor was merely seeking to protect itself around the Bay from the proverbial fate of a house divided against itself.

Therefore, in order to secure a uniform agreement throughout the whole Bay Area (six counties), and after a strike in Alameda County and much controversy, the local unions worked out a compromise whereby the wage scale of the 1938 contract as fixed by the arbitrators was reduced as of October 18, 1938, so as to fix the wage rate at \$8.50 per 8-hour day (292). On this compromise basis, the principal employers in the Bay Area (other than the Pacific Manufacturing Company in Santa Clara County) signed the 1938 agreement (901, 1110).

All these matters were handled and negotiated by the local unions pursuant to the local autonomy guaranteed by the Brotherhood's Constitution as quoted above (pp. 26-27, *supra*). See testimony at pages 1108, 455, 894-5, 1093.

SUBDIVISION V

The part which President Hutcheson had in the incident of the Pacific Manufacturing Company, was perfectly lawful.

At the time when the 1938 Arbitration Award of \$9.00 a day was made, the Pacific Manufacturing Company in Santa Clara County, which had in May, 1936, signed a contract in the 1936 form with the Local Union of the Carpenters in Santa Clara County (known as the Santa Clara Valley District Council), possessed the right to affix the union label, but was paying only \$8.00 per 8-hour day—the same as other employers under the general contract of 1936.

That contract contained a clause (numbered 21) reading as follows (1092):

“This agreement is to remain in effect for a period of not less than one (1) year from June 15th, 1937

or until June 15th, 1938, and shall continue to remain in full force and effect thereafter, except that it shall be subject to change, modification or termination by either party upon sixty (60) days notice being served in writing upon the other party."

In consequence, when the Arbitration Award of \$9.00 a day came down, the Santa Clara Valley District Council had an accrued right to terminate its contract with the Pacific Manufacturing Company upon giving sixty days' notice (1092). If the contract were so terminated, the right of the Company to continue to use the union label would, of course, also terminate automatically.

Hence, after the 1938 Arbitration Award the Santa Clara District Council was desirous of signing up the Pacific Manufacturing Company for the new wage scale, whereas that Company was desirous of continuing at the old rate,—thereby proposing to enable itself to undersell employers in all the other Bay counties.

This dispute was reported to the General Office by the Santa Clara Valley District Council on September 13, 1938 (1086-9), and the letter of the Company of even date to the Council was enclosed with the report (1089). Thereupon President Hutcheson, in a letter dated September 20, 1938, to the Council, quoted the aforesaid clause in the contract with the Company giving the Council the right to terminate it on sixty days' notice; and on the predicate thereof he said (1092-5):

"I understand, full well, that the Pacific Manufacturing Company being located in Santa Clara is not in what is usually referred to as the metropolitan area in and around the Bay District, but in the past the agreement has been the same as that in the Bay area."

"It is the duty of the undersigned, and other General Officers, to protect the members of our organization in every way we possibly can, and in view of that fact, and due to clause 21 in your agreement, hereto-

fore quoted, it is my desire that you, representing your Council, notify the Mill Operators that in conformity with Section 21 you are desirous of receiving within sixty days a wage scale equal to that of the San Francisco area that has been given to our millmen by the arbiter; namely, \$9.00 per day; or if they will not pay that and the members of your district wish to continue to work at the \$8.00 wage scale it will be necessary, if they desire to continue the use of the label of our Brotherhood, that they agree they will not ship their material into a locality where the wage scale is higher than that paid by the Santa Clara mill operators. In other words if they wish to continue to ship material into the San Francisco district, and use the label of the Brotherhood, it will be necessary that they pay a wage scale equal to that paid in the San Francisco area, and if they do not wish to pay that and want to continue to use the label they will have to agree not to ship material into that locality or any other locality paying a higher wage scale than that now being paid in your district."

This letter of the General President postulated as its predicate that the Santa Clara District Council might lawfully terminate that contract pursuant to the foregoing termination clause therein, and thus bring to an end as of the date of such termination the right of the Pacific Manufacturing Company to affix the union label to articles thereafter manufactured. In that event, the Pacific Manufacturing Company (if it wished to continue to pay less than the award of the Arbitrator) could get back the right to use the union label only by agreeing to keep out of those other localities in the general area where a higher scale was being paid. The President was, of course, writing (as the opening and the purport of his letter show) about localities in or adjoining the Bay Area which theretofore had contracts in accordance with the standard San Francisco form.

Moreover, this Pacific Manufacturing Company incident involved no interstate commerce whatever. It was all

part of the labor unity presented by the Bay Area itself and was a wholly legitimate labor effort to preserve throughout the Bay Area environs the very principle of a uniform wage scale which had been established by the 1936 contract and to which the Pacific Manufacturing Company had itself adhered in its 1937 contract. (*Barker Painting Co. v. Brotherhood of Painters*, 15 Fed. (2d) (C. C. A. 3) 16, 18.)

To quote the defendant Cambiano (1108):

"We have always considered Santa Clara County is what is commonly known as the Bay Area. Because of that geographical fact Santa Clara subsequently came into the six-county agreement at the end of 1938, and took part in the 1939 contract. Prior to the 1921 crash here Pacific Manufacturing Company and the Bay District always worked under union conditions."

When the Santa Clara District Council gave to the Pacific Manufacturing Company sixty days notice of the termination of its 1937 contract with that Company, the latter ultimately agreed to "come in on the \$8.50 rate" which represented the compromise for the six counties after the Arbitration Award of \$9 a day (1109, 1110). (See pp. 34, *supra*, and 40-41, *post*.) Hence, actually the Pacific Manufacturing Company never lost its right to the union label, and continued to ship and sell wherever it chose (1110-1).

SUBDIVISION VI.

The fact that copies of the 1936 and 1938 contracts were filed with an Executive Officer of the Brotherhood in Indianapolis cannot possibly convict the Brotherhood of this alleged crime.

The prosecution stresses that copies of the 1936 and the 1938 contracts were from time to time filed with Mr. M. A. Hutcheson, First General Vice-President, and that after such filing the Vice-President issued permits for the use of the union label by the employers who signed the same.

The prosecution claims that this filing and this issuing of permits put the Vice-President on notice of the terms of paragraph 16 of the contract of 1936 (283) and paragraphs 17 and 18 of the contract of 1938 (289), and thus put the United Brotherhood in the position of acquiescing in them. This reasoning is utterly fallacious and can in no wise constitute a criminal case against the United Brotherhood.

The Vice-President issues permits for the union label to all employers of the Brotherhood's 350,000 members in United States and Canada, with whom local unions have signed contracts in the exercise of the local autonomy which such unions possess. His function in this respect is thus stated in the Constitution (413):

"He shall have charge and issue the label and keep a record of same in accordance with the constitution and laws of the United Brotherhood."

Hence, the Vice-President has to have those contracts in his files in order to know to whom to issue permits for the use of the union label and to keep a record of the periods of such contracts in order to know when they (and hence the permits) expire. It would be purely imag-

inary to say that in consequence the Vice-President is charged with the impossible task of scrutinizing each and every paragraph, clause and sentence of these thousands of contracts in order to discover whether, lurking in them or behind them, is some possible illegality or some possibility of construction which might lead to the possibility of illegality.

The General Officers of the United Brotherhood are not lawyers. On the contrary, they are all men of their trade. It would be indefensible and intolerable to impute criminality to any one of them—even more so to the 350,000 members constituting the body of the United Brotherhood—merely because some policing agency of the Government subsequently found occasion to question the legality of some clause in these multitudes of contracts or the legality of some local practice thereunder.

But even if it be assumed—without proof and contrary to the proof—that these multitudes of contracts were examined by the Vice-President for any other purpose than to see that they were actually executed by the local union and the employer, and did not transgress the minimum pay for a union carpenter fixed in the General Constitution and, hence, were a proper basis for the issuance of a union label, there would still be no conceivable justification for a deduction that the United Brotherhood was thereby consciously making itself a participant in some alleged conspiracy against interstate commerce supposed to be lurking behind paragraph 16 of the contract of 1936 and paragraphs 17 and 18 of the contract of 1938. The Vice-President would, in such event, observe that those very paragraphs in each of those contracts expressly and explicitly exempted and excised from their operation and from the commodities affected thereby the whole field of interstate commerce; and that those paragraphs contained nothing at all on their face directed against interstate commerce, but were entirely consistent with a pur-

pose to be local in their application and effect. (See pp. 41-43, *post.*)

But these considerations need not be expanded in detail, because they are *conclusively clinched* by the fact proved in writing that the moment President Hutcheson saw this paragraph common to the 1936 and 1938 contracts, he ordered it out, as above set forth (pp. 32-33, *supra*), and as shown in the aforesaid letter of Mr. Ryan to General President Hutcheson dated December 6, 1938 (Ex. 41-4, pp. 444-5). As a result of this order by President Hutcheson, paragraph 17 in the 1938 contract was radically changed on December 19, 1938 by mutual agreement in the manner above set forth (pp. 32-33, *supra*).

SUBDIVISION VII

The presence of President Hutcheson in San Francisco in the Fall of 1938 cannot possibly convict the United Brotherhood of this alleged crime.

The particular labor dispute which brought President Hutcheson to California "a little before October 1, 1938", and in the course of which he ordered paragraph 17 (in its then form) out of the contract of 1938, was a purely local dispute,—local to the Bay Area (901).

There is not a particle of evidence that at that time President Hutcheson had before him anything at all indicative of bad faith or insincerity in that contract's express disclaimer of any application to goods in interstate commerce (289, 290, 294).

At that time the Employers in Alameda County organized as the Wood Products Association, and the Pacific Manufacturing Company (as aforesaid) had refused to accept the uniform scale of \$9.00 per 8-hour day fixed in the Arbitration Award rendered in the early Summer,

1938 (422, 769). A strike had, in consequence, broken out in Alameda County, and the destiny of the carpenters' craft in the whole Bay Area was at stake (773, 902).

It was inevitably, therefore, that the situation before President Hutcheson, while in San Francisco on that occasion, was this local controversy and this campaign for a uniform wage scale by the local unions of the Bay Area (903). There is not a particle of evidence that anything else was before him—much less that he was directing any attention to employers in other states.

As a result of all these considerations and this proof, it is but fair and in accordance with elementary principles of law to recognize that the substitute paragraph 17—substituted in writing as aforesaid, in December, 1938 (pp. 32-33, *supra*)—represented to him merely a reference to the then pending local controversy, and to the current effort of the local unions around the Bay Area to secure a uniform wage scale from all employers therein. (*Barker Painting Co. v. Brotherhood of Painters*, 15 Fed. (2d) (C. C. A. 3) 16, 18.)

SUBDIVISION VIII

Paragraph 16 of the contract of 1936 and Paragraph 17 of the contract of 1938 merely reproduced a trade rule of all the building trades in San Francisco since 1903. Its presence in these contracts could not possibly convict the United Brotherhood of this alleged crime.

In the Arbitration Award which preceded the 1938 agreement, there was included by the Board of Arbitrators a paragraph reading as follows (422):

“8. Maintenance of Fair Labor Conditions.

“It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interests of the community, in aid of the main-

tenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement."

This clause was designed to meet a purely local situation, to-wit, that many employers in the Bay Area, including all in Alameda County, had failed to sign the Arbitration Agreement and refused to be bound by the result (772, 786, 792).

To quote the defendant Kelly (772):

"We were not arbitrating for the Northwest. The paragraph referred to conditions as existed in the territory covered by the Bay Counties District Council of Carpenters."

And again (786):

"It was to force the Oakland side to abide by the Award due to the fact that Oakland employees were part of the Arbitration Agreement. . . . That was the main reason we had in our minds at the time."

Accordingly, when the contract of 1938 was drafted, this Paragraph in the Award was embodied as a recital in Paragraph 2 thereof, and then was re-embodied as a contractual provision in Paragraph 17 thereof (subject, however, to the exemptions and exceptions of Paragraph 18 thereof relating to interstate commerce, etc.) (896).

There was nothing new about this Paragraph in the Arbitrators' Award, and it was not peculiar to the carpenters. It had been a standard clause in many previous contracts made by the various building trades unions in San Francisco constituting the Building Trades Council.

Thus, the Building Trades standard contract of 1903 contained the following clause (Deft's Ex. P, pp. 760-1):

"Sec. 1. It is agreed by the Building Trades Council, that they will refuse to handle any material

coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or employing other than union mechanics."

So, likewise, the Building Trades standard contract of 1917 provided (Pltf's Ex. 70, p. 760):

"It is agreed by the Building Trades Council that they will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or are paying less than the wage scale hereinbefore quoted, or employing other than union mechanics."

The same clause reappeared in the Building Trades contract of 1925 (Def't's Ex. Q, pp. 761-2). A somewhat similar clause was part of the carpenters' agreement of 1936. (283).

In consequence, when the Arbitrators by their aforesaid Award in 1938 recommended the continuance and inclusion of this clause, they did nothing more than recognize a time-honored provision which had been part of the Building Trades contracts with employers in San Francisco for the preceding 35 years,—a clause which had never been challenged and which had become basic to labor relations in San Francisco. (*Hunt v. Crumboch*, 325 U. S. 281, 284).

It is impossible to see how this clause could be the root of a conspiracy by the carpenters which, according to the Indictment, began in 1936 (26), when in fact the clause had been in all building trades contracts from as far back as 1903.

SUBDIVISION IX

The so-called McCreedy correspondence vindicates, rather than convicts, the United Brotherhood.

An effort was made by the prosecution to connect a general officer of the United Brotherhood with knowledge and approval of the alleged conspiracy by certain correspondence with a Mr. E. A. McCreedy, Treasurer of Grand Rapids Store Equipment Co., Grand Rapids, Mich. Actually this correspondence has exactly the opposite effect.

The Exhibits are 166, 167, 170 and 171 (pp. 480, 481, 482, 496). The J. C. Penney Company in San Francisco had from time to time placed orders with the Grand Rapids Company for patterned lumber (488). The first letter is one from the Grand Rapids Store Equipment Co. (per McCreedy) to Mr. S. P. Meadows, Second General Vice President of the Brotherhood, at the Brotherhood's office in Indianapolis. In it Mr. McCreedy thanked Mr. Meadows for the courteous hearing given them and for Mr. Meadows' promise to confer with Mr. Hutcheson about Mr. McCreedy's complaint that some unnamed person, professing to speak on behalf of some San Francisco union had told the Penney Company that Grand Rapids patterned lumber would not be installed "even though we did have a label" (479, 480). The letter is dated September 6, 1938 (479).

On September 9, 1938, Mr. M. A. Hutcheson, First Vice-President of the United Brotherhood, replied to Mr. McCreedy, stating (481):

"It is regrettable that such a condition should develop, and if you will ascertain who it was that made such statement to the representative of the J. C. Penney Company that they would not install the fixtures, I assure you we will have the matter inves-

tigated, however, it is necessary that we have this information before we will be able to proceed in the matter."

Mr. McCreedy waited two weeks before addressing himself to this request from Mr. Hutcheson, and then under date of September 23, 1938, wrote to President Wm. L. Hutcheson a letter in which he utterly failed to give the information requested but urged that the President order that Grand Rapids lumber bearing the union label should be worked on in San Francisco. It enclosed a copy of a vague letter dated September 17, 1938, from the J. C. Penney Company (Exhibit 171, p. 496) which also failed to give the information requested.

On September 29, 1938, Mr. Meadows replied from Indianapolis, again requesting the name of the person alleged to be connected with some San Francisco union who was said to have stated that Grand Rapids fixtures would not be installed. The letter then continued (485):

"For your information will say that I am *immediately bringing* this matter to the attention of one of our general representatives to see if he can get to the bottom of the thing and straighten out the situation in a satisfactory manner." (Italics ours.)

On October 18, 1938, Mr. McCreedy wrote to Mr. Meadows saying that no word had as yet been received by the Grand Rapids Company: "Consequently, we would appreciate your early advice in this matter" (486).

To this letter Mr. W. L. Hutcheson replied (per M. A. Hutcheson) on October 20, 1938 (487):

"Your communication of October 18th in which you make inquiry concerning your letter of September 29th has been received. The reason we delayed answering your former letter was owing to the fact that we were having an investigation made in an endeavor to learn just who gave out the information that the material for the J. C. Penney Job would not

be erected, and our representative reports that he has been unable to find anyone connected with the Penney Company who had been given this information.

"With reference to shipping the material for the present job which you are now making up, we see no reason why you should hesitate to ship that material whenever you see fit to do so, and we are sure you will have no difficulty in having your fixtures installed." (Italics ours.)

There is no evidence that thereafter any union in the Bay Area refused to install labelled equipment for the Grand Rapids Company; or that either the Grand Rapids Company or the J. C. Penney Company made any further complaint to the General Office in Indianapolis.

If there was some delay in finding out whether any union man had in fact told the J. C. Penney Company what it was alleged to have reported to the Grand Rapids Company, the fault was really with the J. C. Penney Company, because as Mr. McCreedy admitted (498):

"The correspondence would indicate that nobody knew who the person was who made the remark about installing the J. C. Penney job. It is true that the correspondence is predicated upon a claim that some Union representative said they could not instal a job and nobody knew who the man was who made the statement. Our correspondence is based on what the Penney Company told us, and the Penney Company didn't know who the man was, according to our correspondence, that they talked to."

This correspondence, though put in evidence by the prosecution, fully exonerates the executive officers of the United Brotherhood. They sought vainly through the Grand Rapids Company and through the Brotherhood's own general representative to find out whether there was any truth in the Grand Rapids Company's hearsay complaint. Certainly, the Penney Company and the Grand Rapids Company both failed to make good.

Nevertheless, instead of treating the episode as a mare's nest, the General Office at Indianapolis went out of its way to assure the Grand Rapids Company that they could ship into San Francisco whenever they saw fit to do so and that their fixtures would be installed (487-8).

SUBDIVISION X

The contract of November 1, 1938, by Local 1956 of Contra Costa County (one of the Bay counties) with the Redwood Manufacturers Company cannot possibly convict the United Brotherhood of this alleged crime.

Under date of November 1, 1938, the Redwood Manufacturers Company of Pittsburgh, Contra Costa County, and Millmen's Union No. 1956 of Contra Costa County, made a contract (Exhibit 123-8, -pp. 560-4), which contained a paragraph identical with the substituted Paragraph 17 which in the Fall of 1938 replaced as aforesaid (pp. 32-33, *supra*) Paragraph 17 in the contract of 1938 as first made (561); and it also contained a clause similar to Paragraph 18 in the 1938 contract, exempting from its operation articles in interstate commerce (562).

At the foot of that contract were the signatures of the only parties named in the contract as the contracting parties (560), to wit: the Redwood Company and Millmen's Union No. 1956. These were followed by the signatures of "California State Council of Carpenters, by J. F. Cambiano, President, and D. H. Ryan, Secretary," and of "United Brotherhood of Carpenters & Joiners of America, by J. F. Cambiano, General Representative" (562).

On a page after the signatures there was the following addendum (562-3):

"It is to be confirmed by the International of the U. B. of C. & J. of A. that they will not approve any

• agreements entered into between the employers and the local unions under their jurisdiction in the counties of San Francisco, Alameda, Contra Costa, Marin, San Mateo, and Santa Clara, unless said agreements be uniform with respect to rates of wages, hours, and working conditions.

"It is understood between the Company and the Union, that this section is being included with the complete understanding that in this and in future agreements, wage rates of the Redwood Manufacturers Company must be competitive with competing manufacturers whose plants are located outside of the six counties involved in this agreement. In general, such competition is as listed in Section 20."

It is impossible to see how this contract could link the United Brotherhood to the conspiracy here charged. If it had any relevancy at all, it worked the other way.

This Redwood Manufacturers Company was unionized by Local Union 1956 in 1937. Previously it had been an open shop for 37 years (1048). In the Fall of 1938 it agreed to put into effect the compromise wage scale of \$8.50 per day which, as aforesaid (pp. 34, 40, 41, *supra*), was then being accepted by the principal employers throughout the Bay Area (1038, 1042, 1107),—thereby adding Contra Costa to the six counties in the Bay Area (1100, 1106).

Obviously, the signature of the United Brotherhood through Mr. Cambiano was appended because of the aforesaid addendum at the end. That addendum, as its face shows, was for the purpose of assuring the Redwood Manufacturers Company that the United Brotherhood would not stultify itself, *i. e.*, would do nothing to break the uniformity of wages, hours and working conditions throughout the six counties of the Bay Area, and thereby leave that Company at a disadvantage. So far from contemplating exclusion of articles manufactured outside the Bay area, it recognized and provided for competition between the Redwood Company and outside manufacturers,

and expressly exempted articles in interstate commerce (562-3). (*Barker Painting Co. v. Brotherhood of Painters*, 15 Fed. (2d) (C. C. A. 3) 16, 18.)

SUBDIVISION XI

The formal act of Mr. M. A. Hutcheson in endorsing "approved" on the By-Laws and Trade Rules of the Bay Counties District Council cannot possibly convict the United Brotherhood of this alleged crime.

The final effort of the prosecution to connect the United Brotherhood with the alleged conspiracy rests on the fact that a printed booklet of over 30 pages (Ex. 2, p. 415), entitled "By-laws and Trade Rules Bay Counties District Council of Carpenters and Joiners of America, San Francisco and Vicinity, With Jurisdiction in San Francisco, San Mateo, Marin and Alameda Counties", bears at the bottom of the cover, the following (415):

"Adopted February 22, 1939,

Approved by First General Vice President, M. A. Hutcheson, May 26, 1939, In Effect May 26, 1939."

Concerning the First General Vice President, the Constitution of the Brotherhood provides (413):

"He shall have power to examine, approve or disapprove of local union, District Council, State Council or Provincial Council laws."

Obviously, since there are local unions in all sizeable localities throughout the United States and Canada and District Councils in all large cities, and since these subsidiary bodies are constantly amending their laws, hundreds of these documents come to the First General Vice

President every year. His only duty as regards them is to see that they do not violate any provisions of the General Constitution of the United Brotherhood, for that Constitution expressly gives to all these subsidiary bodies *plenary local autonomy*, including the unrestricted right to make laws

"which do not conflict with the laws of the international body" (461-2).

The First General Vice President is not a lawyer but a carpenter. It neither is nor could be part of his duties to examine these scores of documents which come to him constantly in order to determine whether or not they contain anything which, by any possibility, might suggest a possible violation of national, state or municipal laws.

In this booklet, at page 29, under a chapter entitled "Millmen" and under a sub-heading entitled "Extract of Agreement Made With Mill Owners", there is the following (416):

"Article II. Section 1. It is agreed by the District Council that, in conformity with the agreement between the mill owners and millmen, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing Trade Rules, or are paying less than the wage scale hereinbefore quoted, or employing other than Union mechanics.

"Sec. 3. These conditions shall apply not only to mills within the City and County of San Francisco, but to all mills in the State of California, as well as those of all other States."

The matter thus quoted, it will be observed, is merely a declaration of the decades-old policy for the effectuation of which the carpenters and millmen in the Bay Area had been striving through the years, to wit: that they would refuse to handle any material which was made at

a lower wage scale or under less favorable working conditions or by labor not recognized as union labor. (See pp. 41-43, *supra*.)

Moreover, as we have already shown, these very declarations, in substantially the same form (including the language of Section 3), had been, since 1903, part of the rules and the contracts of the Building Trades Council embracing all the unions engaged in construction work of any kind in San Francisco (pp. 41-43, *supra*).

We submit that it is absurd to say, as does the prosecution, that this carpenter who was the First General Vice-President and who received by-laws and amendments by the score constantly, placed the stigma of conspiracy and crime on the whole United Brotherhood of 350,000 members merely because he authenticated this pamphlet as an exercise of local autonomy under the General Constitution of the Brotherhood.

POINT V

The decision of this Court in *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797 (June 18, 1945), did not involve any of the four points as to which this Court has requested further argument herein.

It also does not militate against any of the contentions in our main and reply briefs on the former argument.

(1) In the *Allen Bradley* case, Section 6 of the Norris-LaGuardia Act was not involved.

The activities there in suit were the activities of the Union and of the employer associations as principals. No issue of agency was involved. Moreover, the suit was a civil action for injunction. No question as to the criminal or imputed responsibility of anyone was presented.

The only reference in this Court's opinion to the Norris-LaGuardia Act was by way of reaffirming its decision in the *Hutcheson* case that the Sherman, Clayton and Norris-LaGuardia Acts must be jointly considered in determining whether activities of a labor union run counter to anti-trust legislation. The conclusion of this Court's opinion was that where business groups had combined to eliminate competition among themselves in violation of the anti-trust laws, labor unions could not with impunity aid and abet such a combination.

(2) In the present case, no such formula was presented to the jury, and no such legal test was made a condition of a conviction.

We cannot conceive that, if the Trial Court in the present case had had before it the subsequent decision of this Court in the *Allen Bradley* case, it could or would have charged the jury as it did. The charge as given treated the Clayton and the Norris-LaGuardia Acts as wholly inapplicable. It excluded the whole subject of immunity. It again and again ruled intent and self-interest to be irrelevant. It eliminated as a material factor the actuality of a labor dispute and the settlement thereof. It held that the right of the unions to act with impunity in their self-interest terminated the moment the employers, by acceding, created an understanding and agreement and thus, in legal parlance, a combination (pp. 26-34 of our former Main Brief).

On the other hand, in the *Allen Bradley* case this Court expressly recognized and declared the intent of Congress "to preserve the rights of labor to organize to better its conditions through the agency of collective bargaining" (p. 806). And this Court said (p. 806):

"Since union members can without violating the Sherman Act strike to enforce a union boycott of goods, it is said they may settle the strike by getting their employers to agree to refuse to buy the goods.

Employers and the Union did here make bargaining agreements in which the employers agreed not to buy goods manufactured by companies which did not employ the members of Local No. 3. *We may assume that such an agreement standing alone would not have violated the Sherman Act.* But it did not stand alone. It was but one element in a far larger program in which contractors and manufacturers united with one another to monopolize all the business in New York City, to bar all other businessmen from that area, and to charge the public prices above a competitive level." (The italics are ours.)

The conclusion of this Court was that where a labor union deliberately acted to aid and abet such "larger program" on the part of the contractors and manufacturers, it could have no immunity in such aiding and abetting.

We repeat that no such doctrine, phraseology or test was placed before the jury in the present case. On the contrary, the jury was told by the Trial Court the very opposite. It was told that a bargaining agreement in which the employers agreed, at the unions' demand advanced for the unions' benefit, not to buy goods manufactured at a wage scale or under working conditions inferior to that recognized by the defendant unions, was a "combination" and possessed no immunity for the unions. In the opinion of the Trial Court, such an agreement was, in and of itself and without more, a criminal violation of the anti-trust laws (pp. 25-34 of our former Main Brief).

Obviously, the tests of union responsibility as declared in the *Allen Bradley* case illustrate the decisively prejudicial character of the instructions given in the present case, and also the vital need for different and correct instructions.

(3) Furthermore, what was said by this Court in the *Allen Bradley* case must be read and understood in the light of the facts of that case—facts utterly different from those which existed, or which under proper instructions the jury could have found to exist, in the present case.

Among other outstanding factual differences, we enumerate the following:

1. In the agreements of 1936 and 1938 in the present case there was no ban on articles merely because of geographical origin. The test was not source but wages and working conditions or union label (982, 896-901). On the other hand, in the *Allen Bradley* case the ban was against articles made outside the Metropolitan Area, irrespective of wages, working conditions or union affiliation.

2. The closed shops created by the agreements of 1936 and 1938 in the present case operated as against non-conforming employers anywhere—including those in the Bay Area itself.

3. In the *Allen Bradley* case, according to the findings therein, Local 3 expressly promised the local manufacturers and contractors an exclusive market within the city so that they could name their own prices to offset increased production costs. No such promise and no such purpose were expressed in the agreements of 1936 and 1938 in the present case. Under those agreements, the local signing manufacturers were not protected in the slightest from competition from other manufacturers wheresoever situated who actually did conform as to wages and working conditions.

4. In the *Allen Bradley* case, according to the findings therein, it was agreed that union members should work only on switchboards of local manufacture by union shops. The contracts of 1936 and 1938 in the present case expressed no such agreement. Work was not confined to articles of local manufacture by union shops.

5. In the *Allen Bradley* case there was a three-cornered agreement. The agreement was between three groups—manufacturers, contractors and union—and, according to the findings, it was agreed that the contractors should have the sole power to buy materials for any job. In the present case, the agreement was solely between the union and the signatory employing manufacturers; and there was no agreement that contractors (or, indeed, anyone else) should have the sole power to buy materials for any job.

6. Moreover, in the present case, all the endeavors of the union defendants to show that there was a bitter struggle going on throughout California and the so-called northwest between the A. F. L. unions on the one hand and the C. I. O. unions and non-union labor on the other hand, were ruled out by the Trial Court, to the great prejudice of the union defendants. (See pp. 6-7, 51 of our former Main Brief; and pp. 2-3 of our former Reply Brief.) No such situation was presented in the *Allen Bradley* case.

CONCLUSION

The Judgment against the United Brotherhood should be reversed and the Indictment dismissed, or, at least, a new trial ordered.

April 1, 1946.

Respectfully submitted,

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Attorneys for this Petitioner.

FILE COPY

No. 

6

IN THE

Supreme Court of the United States

October Term, 1945

UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA

Petitioner

against

UNITED STATES OF AMERICA

Respondent

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONER UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, on Reargument

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I

The Respondent's Concessions and their Vital Effect

A

The Respondent's brief on reargument concedes:

1. Section 6 of the Norris-LaGuardia Act applies to criminal prosecutions under the Sherman Act, including the present case (pp. 4, 6, 10).

2. In a criminal prosecution under the Sherman Act, growing out of a labor dispute, "Section 6 is in substance the proper criterion" (p. 8).

3. The words "association" and "organization" in Section 6 "apply to the petitioning labor unions" (p. 8).

4. The Senate Report, which recommended the Norris-LaGuardia Act for passage, when taken by itself, "might not be regarded as supporting the Government's present contention" (p. 21).

B

These concessions by the Respondent supplement the following concessions made by the Respondent in its former brief on the original argument in 1945:

1. The Trial Court ruled, in effect, that it is no defense that the agreements of 1936 and 1938 between the local unions and the local employers' associations were "entered into as an incident to a dispute between employers and employees concerning terms or conditions of employment", and that "the union group participated in the agreement for the purpose of promoting their own self-interest" (p. 21).

2. "It may be conceded that the validity of the convictions of the petitioners who stood trial must be tested upon the assumption that the agreement not to purchase low-cost and low-wage-scale millwork grew out of such a dispute" (p. 26).

3. "It is true that under the broad definition of parties to a labor dispute contained in Section 13 of the Norris-LaGuardia Act, the out-of-State producers of millwork would be parties to a labor dispute between the Bay Area manufacturers and their employees" (p. 28).

4. "It is also true that Section 20 (of the Clayton Act) immunizes 'ceasing to patronize' a party to a labor dispute or 'recommending, advising or persuading others * * * so to do'" (p. 28).

As to the significance of these four concessions we refer to the discussion thereof in our former Reply Brief submitted in 1945 (pp. 1-6).

C

The decisive effect of these concessions in the Respondent's present brief and in its former brief is clinched by the fact that the Trial Court never regarded the Norris-LaGuardia Act as having any application to the present case.

It ruled out evidence offered by the labor defendants which was vital to show the pendency of continuous labor disputes in 1936 and 1938 and thereafter between the labor defendants and their employers and between the labor defendants and rival union organizations, non-union employees and producers with inferior wage scales and working conditions both in and out of the State of California.

It refused all requests to charge, presented in multifold form, in the language and the substance of the various applicable sections of the Norris-LaGuardia Act.

It ruled and charged that the intent of the labor defendants to promote their own self-interest was not a defense and was not material or relevant as such.

It charged that the fact that the agreement closing the shop against millwork produced at an inferior wage scale or under inferior working conditions grew out of a labor dispute, was not a defense and was not material or relevant as such.

We refer to the description and analysis of these rulings, refusals and charges presented in Points II and III (pp. 22, 31) of our former Main Brief submitted in 1945.

D

The Respondent's present concessions, as well as those in its brief of 1945, are fatal to the theses of the Circuit Court of Appeals—evidently concurred in by the Trial Court—that the making of the agreements of 1933 and 1938 terminated the labor dispute and therefore terminated the labor immunities; that the Norris-LaGuardia Act thereupon ceased to be applicable; that the continuous controversies between these labor defendants and rival union organizations, non-union employees and producers with inferior wage scales and working conditions both in and out of the State were irrelevant; and that the intent of the labor defendants that such agreements should be defensive and offensive measures for their own protection and interest in those controversies was immaterial (1684-3).

See the discussion of this subject in Point II (p. 22) of our Main Brief in 1945, and in our Reply Brief (pp. 3-6) in 1945.

II

The very wording of Section 6 negatives and repudiates the present efforts of the Respondent to whittle down its meaning and to discriminate in its application.

(1) At pages 5, 6 and 7 of its brief the Respondent raises a question as to whether the Norris-LaGuardia Act reaches the prosecution brought by the Government, where "the Government was not a party to that" labor dispute.

If there were such a question, then *United States v. Hutcheson*, 312 U. S. 219, and the many decisions of this Court following it rest upon unstable ground. That Act is a limitation upon the jurisdiction of the courts and

upon the nature of conduct by labor unions which can be regarded as a violation of any law of the United States, including the Anti-Trust Laws.

(2) On page 6 it is said that "Section 6 differs from the sections dealing with injunctions (principally Sections 4 and 7) in that the latter apply to 'cases involving or growing out of any labor dispute' whereas Section 6 in terms applies to an 'association or organization participating or interested in a labor dispute'."

We do not comprehend this attempt at distinction. Respondent has overlooked the definitions in Section 13 of the Act which by that Section are made applicable to all the other sections. By that Section a case involves or grows out of a labor dispute when it "involves any conflicting or competing interest in a 'labor dispute' (as defined in this section) of persons participating or interested therein (as defined in this section)." In other words, a case is of the character stated when the parties involved are of the character stated.

(3) At page 7 the Respondent claims that it is "arguable" that Section 6 "only applies to cases between the adverse parties to a labor dispute."

This contention is directly contrary to the Respondent's explicit concessions at pages 4, 6 and 10 that Section 6 applies to criminal prosecutions under the Sherman Act and to this very case.

(4) At page 20 the Respondent says:

"The Norris-LaGuardia Act was not designed to free labor unions from liability for such conduct of their officers, but from liability for the acts of individual members in no way authorized to bind the union."

There is but one of many expressions in the Respondent's brief that Section 6 in terms and application draws

a distinction between a union's responsibility for the unlawful acts of its members and its responsibility for the unlawful acts of its officers.

In point of fact Section 6 does just the opposite. Its formula is single and uniform; and it determines the responsibility or liability of the union (or an officer or member thereof) "for the *unlawful* acts of" others, whether such others are "individual officers, members or agents." By the very terms of the Section, the test of a union's responsibility for the "unlawful acts" of others, whether such others are officers, members or agents, is one and the same, to wit, the union's actual participation in, or actual authorization and ratification of, such "unlawful acts."

Under that Section there is but one stated criterion for criminal responsibility or liability by the union. That uniform criterion does not vary according to the identity or capacity of the person who performs the "unlawful acts."

III

The Respondent fails in its inadmissible effort to escape the fact that Section 6 expressly and explicitly conditions the union's criminal liability upon actual participation in, or actual authorization or ratification of, the unlawful act itself.

Section 6 leaves no room for constructive, imputed or general responsibility for crime. It leaves no room for substituted formulations.

On the contrary, the Section declares in explicit, unambiguous and inescapable words that the union must be held to have no responsibility or liability for such "unlawful acts" unless on its part and according to clear proof there has been "actual participation in, or actual authorization of, *such acts*, or ratification of *such acts* after actual knowledge thereof."

In other words, in a criminal case the union can be held responsible criminally only if an actual *particeps criminis* in the unlawful act. The union must have actual complicity in the doing or ratification of the unlawful act itself. Its guilt must be personal to and by it.

The very terms of Section 6 negate the Respondent's present effort to rewrite the Section, to whittle down its meaning and application, and to substitute for its clear language such dubious and ambiguous phrases and standards as "implied authority", "scope of authority", "general principles of agency", and acts which the agent "assumed to do" while "performing duties delegated to him."

In short, Section 6 supplies its own standard, criterion and formula for use in its own limited subject-matter, to wit: "unlawful acts" by an officer, member or agent of a union and the possible consequence of criminal liability therefor by the union. As to that particular subject-matter and issue, Section 6 is complete and exclusive. It leaves no room for the substitution of some other standard, criterion, or formula by the process of interpretation. When applicable, it controls the issue to which it is directed according to the formula which it itself expresses.

The labor unions were entitled to have that formula and the mandate of that Section given to the jury; and it was reversible error for the Trial Court to ignore them and to substitute some other formulation, alien to the language of the Section itself.

The unions and the jury were entitled to the genuine article, and should not have been given a substitute now laboriously and dubiously argued to have been "just as good."

Since the Respondent now rightly concedes that Section 6 was applicable, the concession proves that the act of the Trial Court in giving the jury a substitute was either judicial legislation or an erroneous ruling that the Section was not applicable.

The Respondent concedes that in criminal cases involving individuals, "the principal is only criminally liable for his own act and for those of his agent which he has expressly assisted or encouraged" (p. 26); but Respondent then argues that "a less stringent rule has been applied to corporations" (p. 26). But whether this is so or not, the fact is plain that Section 6 phrases no such distinction but rather makes applicable to individuals, corporations and unions alike its criterion for determining criminal responsibility for the unlawful acts of others. And the further fact is plain that the intent of the enactment as well as of its explicit phrasing was, as stated in the Senate Report, to eliminate criminal responsibility unless there was actual participation in or ratification of the unlawful act as such.

The Respondent cites (pp. 27, 28) the cases of *N. Y. Central R. R. Co. v. U. S.*, 212 U. S. 481, and *Egan v. U. S.*, 137 F. (2d) 369, cert. denied 320 U. S. 788. Neither of these cases involved a labor issue or the Norris-LaGuardia Act. Their citing is unfortunate for the Respondent, for they illustrate the difficulties and dilemmas into which the Respondent gets by asking that the explicit formula in Section 6 be laid aside and that there be substituted what it calls "general principles of agency". Both those cases state that a corporation may be held responsible in tort for the acts of its agent in the course of his employment "although done wantonly or recklessly or against the express orders of the principal" (212 U. S. 481, 493; 137 F. (2d) 369, 379); but that statement is the very rule which every congressional spokesman for the Norris-LaGuardia Act expressly declared should not be applicable to labor unions acting in the course of a labor dispute and which Section 6 was designed to render thus inapplicable. See the remarks of the various Senators quoted by the Respondent (pp. 13-24) and the Respondent's quotation from the Senate Report (pp. 12, 13).

A final illustration of the difficulty in which the Respondent's effort at substitution involves itself, is

furnished by the instance of a strike which has been expressly authorized by the union and in which all its members are instructed and required by the union to participate. In the course of that strike, a certain member of the union, acting in furtherance of the success of the strike and for the benefit of the union, perpetrates an unlawful act. Such would be a clear case where an agent "has assumed to do" for his union principal an unlawful act "while performing duties actually delegated to him". Yet the Respondent would be the first to concede, if not claim, that in such case Section 6 of the Norris-LaGuardia Act immunized the union from either civil or criminal liability. How then can the Respondent claim that Section 6 would have a different or contrary application merely because such member performing such unlawful act happened also to be an officer of the union?

IV

The report of the Senate Committee in favor of the passage of the Norris-LaGuardia Act upholds our reading of Section 6. The Respondent reluctantly so concedes.

The Respondent's brief devotes much space to quotations of remarks by individual Senators. Those remarks did not have in focus the precise issue now before this Court. Moreover, personal remarks by individual Senators are not evidence of the intent of the Senate or of Congress. On the other hand, the report of a congressional committee introducing and sponsoring a particular bill for enactment in the form and phraseology recommended by such committee, furnishes some legitimate evidence as to the intent of the legislation.

Such is the Report of the Senate Committee on the Judiciary (drawn by Senator Norris) in its sectional

analysis of Section 6 (Report No. 163, Cal. No. 176, 72d Congress, 1st Session, Feb. 4, 1932, p. 19). At pages 12 and 13 of our Main Brief on this reargument, we have quoted at length from that Report's analysis of Section 6. For emphasis we now repeat the following therefrom:

"It is not the intention of the bill to protect anybody, whether he be employer or employee, from punishment for the commission of unlawful acts either as against property or persons. But no person or organization should be held thus liable unless he or it caused the unlawful act or participated in it or ratified it."

And later in the same Report there is this statement concerning Section 6 (p. 20):

"It is high time that, by legislative action, the courts should be required to uphold the long established law that guilt is personal and that men can only be held responsible for the unlawful acts of associates because of participation in, authorization or ratification of such acts."

These quotations demonstrate why, in its present brief, the Respondent feels called upon to concede (p. 21):

"This report by itself is not too clear on the point here in question, and, if that were all there were, might not be regarded as supporting the Government's present contention."

Unfortunately, the Respondent's brief, in quoting (pp. 20-21) what it characterizes as "the pertinent portion of the Senate Report" concerning this Section 6, omits the Report's decisive portions which we have quoted above.

There was nothing in the House Report, favoring the enactment of this legislation, which conflicts with what was thus said in the Senate Report concerning the application of Section 6 in criminal cases. Concerning Section 6, the House Report consisted only of three sentences containing merely generalized language. (Report No. 669, 72d Cong., 1st Sess., p. 9.)

V

As to this petitioner's criminal responsibility, the Trial Court not only refused all our requests based upon Section 6, but rejected the formula and criterion declared and made mandatory by that Section in such a case as this.

The Trial Court charged the jury that the guilt or innocence of the labor unions was to be determined "in the same manner as you determine that of the corporations, that is, *by an examination of the acts of their agents*" (1138).

This test, particularly when applied to a criminal case such as this, is contrary to and reverses the test prescribed in Section 6 which declares as the criterion, not an examination of the act of the agent (otherwise than to determine its unlawfulness), but *an examination of the act of the union itself*. In other words, the charge completely reversed the perspective and approach dictated by Section 6.

The Trial Court then continued with and emphasized its reversal of the true perspective and content of Section 6 by further charging that the "act of an agent" done for or on behalf of a union and within the scope of his authority, "or an act which an agent has assumed to do" for a union while performing duties actually delegated to him, is deemed to be the act of the union (1137-8).

Thus, for a second time the Trial Court charged the jury to determine the criminal liability of this petitioner according to what the agent did or "assumed" to do and not according to the actual participation of the union in the doing of such act.

Hence, here was imputed criminality at its baldest. The jury was told that the criminal act which the agent "assumed to do" must be "*deemed*" to be the criminal act of the union itself.

These charges to the jury by the Trial Court show, on their face and conclusively, that the Trial Court did not regard Section 6 as applicable to any factual or legal issue before the jury concerning this petitioner, and did not intend to follow or give to the jury the formula and criterion which it expressed.

As a result, the Trial Court made decisive altogether different action by the agent and altogether different action by the union than does Section 6, and declared that the criminality of the union must be "deemed" the consequence of the act of the agent rather than the consequence of the act of the union itself.

If, as is now conceded, Section 6 *was* applicable, why was not this petitioner entitled to have the jury given its formula and told of its mandate?

VI

The general and conventional charge on the subject of reasonable doubt did not cure the basic error of the Trial Court in refusing to place before the jury the formula and criterion expressed in Section 6.

Since the substantive requirements of Section 6 as conditions of criminal responsibility on the part of this petitioner were not followed by the Trial Court in its charge, this reversible error cannot be cured by any charge (even if there clearly was one) that other requirements must be proved beyond a reasonable doubt.

VII

The fact that as to individual defendants (not corporations or unions), the Court made a passing and wholly insufficient reference to "conscious participation in the alleged unlawful acts", merely emphasized and enhanced the error of the Court in refusing and rejecting, as to this petitioner, the formula and criterion prescribed in Section 6.

At pages 42 and 43, Respondent's brief admits that the Court rejected Requested Instruction No. 58 (1174) which asked a charge in the language of Section 6 with respect to the individual labor defendants.

Respondent seeks to mitigate this error by saying that the charge contained "a general provision" that as to an individual defendant (other than a corporation and union) there should be consideration "of the evidence as it relates to his conscious participation in the alleged unlawful acts" (4153); and Respondent then says (p. 43):

"The only qualification as to this requirement of 'conscious participation' was contained in the charge previously considered relating to corporations and labor organizations."

Yet Section 6 makes no distinction on the issue of criminal responsibility between individuals and unions. In both cases, there must be actual and knowing participation in the unlawful act itself. Hence, what the Respondent refers to as the Trial Court's "qualification" in the case of the defendant unions of its charge as to the defendant individuals merely added to the basic error and to the hopeless confusion which must have existed in the jury's mind and which was enhanced by the refusal of the Trial Court to follow and give to the jury the formula and criterion in Section 6 either in the case of the individuals or in the case of the unions.

VIII

In any event, the charge as to this petitioner's criminal responsibility was ambiguous, inadequate and misleading, and hence must result in a reversal.

In the very recent case of *M. Kraus & Bros., Inc. v. United States*, decided by the Supreme Court of the United States on March 25, 1946, this Court said (slip opinion, p. 9):

“A conviction ought not to rest upon an equivocal direction to the jury on a basic issue. *Bollenbach v. United States*, — U. S. — (slip opinion, p. 5).”

The Requests for Instructions as presented by this petitioner and the local labor unions were clear, definite and accurate. In order that there could be no possible criticism of their phraseology, they reproduced the language and alternatively the substance of Section 6. Since, as is now conceded, Section 6 was applicable and controlling on the issue of the criminal responsibility of the unions, there can be no lawful or justifiable reason for the total rejection of those requests and for the substitution of other and wholly different phraseologies and formulations. (See the rejected Requests and the substituted Instructions, Rec. 1172-5, 1137-8.).

The defendant unions and the jury were entitled to have the formulation in Section 6 out in the open. The action of the Trial Court in withholding it prevents any one from now knowing whether the jury found in accordance with the stated conditions of that Section or would have rendered the same verdict had those stated conditions been revealed to them.

The Respondent's brief devotes some 30 pages to an involved, difficult and speculative argument that the altogether different and far more fluid formulation by the Trial Court was really the equivalent of the clear and

concise formulation in Section 6. But even that labored argument does not venture to explain why the Trial Court thus went around "Robin Hood's Barn" if it itself thought that there was equivalency; and the Respondent does not venture the impossible assertion that the jury realized the alleged equivalency and found in accordance with the language of Section 6.

Juries are not to be instructed on basic issues and principles by equivocal language or by mere implication. Where a fundamental proposition of law is correctly requested by the accused, the refusal to charge it is error. (*Bird v. U. S.*, 180 U. S. 357, 362; *Hersh v. U. S.*, 68 F. (2d) 799, 807.)

IX

Certain erroneous statements in Respondent's brief

1. At page 37 the Respondent's brief says:

"Petitioners' briefs do not seem to object specifically to the first expression (in the Trial Court's charge)—the act of an agent done for or on behalf of a corporation and within the scope of his authority."

This statement is a complete mistake. Both by our requests to charge and by our exceptions to the charge, we asked for an altogether different formula and criterion. Our reasons for doing so are fully set forth above.

2. At page 41 the Respondent's brief says:

"Petitioners asked for instructions stressing the necessity for authorization by the unions of the acts of their agents and such instructions were given."

This also is a complete mistake. Not a single request for instructions presented by the labor unions on this subject was granted or adopted by the Trial Court.

**The evidence as to this petitioner, the
United Brotherhood**

At pages 45-48 the Respondent's brief discusses the evidence as to this petitioner. In view of our own somewhat extended discussion of this subject in our Main Brief on reargument (pp. 25-51), we shall not present any extended rejoinder here.

We believe that we have demonstrated that, as to the United Brotherhood, there should be a dismissal of the indictment, or at least a new trial, for lack of any clear proof of actual complicity on its part as required by Section 6. We also believe that our aforesaid discussion of the evidence as to this petitioner demonstrates that the rulings of the Trial Court concerning this petitioner in rejecting evidence, in refusing requests to charge, and in making certain charges were highly and decisively prejudicial.

We again submit that the ruling of this Court in the civil action entitled *Coronado Co. v. United Mine Workers*, 268 U. S. 295, is an authority *a fortiori* that the present indictment should be dismissed as to this petitioner. See our discussion of that case at pages 17-19 of our Main Brief on reargument.

Concerning that decision the Respondent's brief now says (p. 31):

"We recognize that in the *Coronado* cases the International Union was held not responsible for the conduct of its president or the local organizations.

But the general provisions of the constitution of the International Union of United Mine Workers involved in that case were similar to those in the present case, particularly with reference to the general supervisory power of the president; and the alleged wrongful acts of the

president of that International Union were done for its benefit and in his capacity as president. They were certainly more extended than any conduct of the president of this petitioner herein. Yet, notwithstanding that that case was merely a civil one, this Court held that the evidence did not sufficiently "establish the participation of the International" (p. 301).

We summarize our rejoinder on the subject of the evidence as follows:

1. As to the approval by this petitioner's First Vice President of the by-laws of The Bay Counties District Council, see page 49 of our Main Brief on reargument.

2. As to the act of the First Vice President in issuing permits for the union label after the filing in his office of the contracts of 1936 and 1938, see page 38 of our Main Brief on reargument.

3. As to the amendment made in the contract of 1938 at the insistence of the president of this petitioner, see pages 32, 40-41 of our Main Brief on reargument.

4. As to the part which the president of this petitioner had in the incident of the Pacific Manufacturing Company, see page 34 of our Main Brief on reargument.

5. As to the so-called McCreedy correspondence, see page 44 of our Main Brief on reargument.

It is significant that while the grand jury indicted this petitioner, it indicted none of its officers.

Dated, April 18, 1946.

Respectfully submitted,

JOSEPH O. CARSON,
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HUGH K. McKEVITT,
Attorneys for this Petitioner.

FILE COPY

IN THE
Supreme Court of the United States

October Term, 1944

No. 667

THE BAY COUNTIES DISTRICT COUNCIL OF
CARPENTERS OF THE UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF AMERICA,
et al.

Petitioners

THE UNITED STATES OF AMERICA

Respondent

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
and
BRIEF IN SUPPORT THEREOF**

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IN THE
Supreme Court of the United States

October Term, 1944.

No.

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, THE UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, MILLMEN'S UNION No. 42, THE
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, MILLMEN'S UNION No. 550, J. F. CAMBIANO,
C. H. IRISH, W. P. KELLY, EMIL H. OVENBERG, W. L.
WILCOX and CHARLES ROE,

Petitioners,

v.

THE UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

*To the Honorable Harlan Fiske Stone, Chief Justice of the
United States, and the Associate Justices of the
Supreme Court of the United States:*

The above named petitioners respectfully apply for
issuance of a Writ of Certiorari to review the judgment
of the Circuit Court of Appeals for the Ninth Circuit
entered in this cause August 23, 1944 (R. 1697).

Statement of the Matter Involved

The decision of the Circuit Court affirmed judgments convicting petitioners of violating Section 1 of the Sherman Act, entered December 20th, 1941, in the District Court for the Northern District of California, Southern Division (R. 1366, 1373, 1377, 1379, 1387-1390).

Petitioners are local union organizations and individual officers or collective bargaining representatives thereof, affiliated with the United Brotherhood of Carpenters and Joiners of America of the American Federation of Labor.

Petitioners were indicted with other union defendants and two employer groups connected with the millwork industry in the San Francisco Bay Area (R. 4-37). One employer group affiliated with Lumber Products Association, Inc. pleaded nolo contendere (R. 106-109). Defendants in the other employer group, affiliated with Commercial Fixture and Store Front Institute were tried by jury with the union defendants (R. 138).

Petitioners and other union defendants appealed to the Circuit Court from the judgments entered upon the jury's verdict (R. 1420). The employer group pleading nolo contendere appealed from the judgments based thereon (R. 1407).

The gravamen of the indictment is that defendants effectuated a conspiracy to restrain trade in millwork and patterned lumber manufactured outside the State of California by the defendant employers acceding to wage scale demands of defendant unions in return for which the wage scale agreement contained the clause that "... no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement." (except certain named items) (R. 28).

The indictment then charges overt acts in continuing in effect and carrying out such agreement (R. 28-32). Also included are the stock forms of conclusory averments that defendant unions were not acting in the course of a labor dispute or to enforce legitimate objectives of labor (R. 32).

Statement of Jurisdiction

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, 28 U. S. C. sec. 347 (a).

The judgment of the Circuit Court of Appeals was entered August 23, 1944 (R. 1697). A petition for rehearing was filed September 22, 1944, and was duly entertained and denied October 14, 1944 (R. 1698). The mandate has been stayed until November 17, 1944, and thereafter until disposition of the matter by this Court (R. 1699).

Statutes Involved

The Federal Statutes involved are the Sherman Act, Sec. 1, 15 U. S. C. 1, the Clayton Act, 15 U. S. C. 17 and 29 U. S. C. 52, and the Norris-LaGuardia Act, 29 U. S. C. 102 *et seq.**

Questions Presented

1. Is an agreement arrived at through the process of collective bargaining between unions and employers engaged in a local industry that "... no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors, that do not conform to the rates of wage and working conditions of this agreement" illegal per se under the Sherman Anti-trust Law if enforced by peaceful, conventional union methods against material in interstate commerce?

* Pertinent provisions are quoted in Appendix

2. Would it be a defense for the unions that such agreement settled a labor dispute involving the union demand for a closed shop as to men and materials?

3. Would it be a defense for the unions to show that the direct and primary purpose of the demand for a closed shop was to unionize all local plants in the industry with the ultimate objective of better wages and improved working conditions?

4. Where a union does combine with non-labor groups through a collective bargaining agreement covering terms and conditions of employment, should the end, objective or purpose of the union be considered where an illegal restraint of interstate trade is claimed to have been intended or to have resulted from peaceful enforcement of the agreement?

5. Was the jury properly instructed that the "sole question is whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants" (R. 1554)?

6. Was the jury properly instructed that it would constitute no defense under the law, either to employer defendants or labor union defendants, that such agreement was arrived at in settlement of a labor dispute; or that the motive of the labor union defendants was to promote their self-interest (R. 1534-1537, 1552, 1553)?

7. Was the jury properly instructed that it should not consider whether the millwork and patterned lumber involved in the testimony in the case was union and bore a union label (R. 1554)?

8. Was the jury properly instructed that defendant union organizations, being unincorporated associations, were responsible for the act of an agent which the agent assumed to do for the union while performing duties actually delegated to him (R. 1530)?

9. Was it error not to give a requested instruction to the effect that an officer of a union is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy, but that to bind a union it is necessary to find that the union participated in, or actually authorized the act, or ratified it after actual knowledge (R. 1532, 1533)?

10. Was it error not to give a requested instruction to the effect that no individual defendant who was an officer or member of a union should be convicted for an unlawful act, if any, of another officer or member of the union, except upon clear proof that such individual defendant actually participated in or actually authorized such act, or ratified it after actual knowledge thereof (R. 1533)?

11. Where the Government charged that an agreement between employers and employees was made and enforced with the objective of destroying competition of material in interstate commerce and was allowed to prove picketing or refusals to work upon material originating outside the state, should the defendants have been permitted to show that such material was non-union or produced under substandard labor conditions?

12. Where the Government was allowed to prove as overt acts under the alleged conspiracy the picketing and advertising of material as unfair, should the union defendants have been allowed to show the material was

C. I. O. and that they were acting in connection with an industrial war and labor dispute with such rival union, arising from the counter trade movement of the latter to unionize the industry both in California and in the Northwest!

Reasons for Allowance of the Writ

1. The decision rendered herein is in conflict with the decision of the Second Circuit in *Allen Bradley Company v. Local Union No. 3, International Brotherhood of Electrical Workers, No. 339*, decided October 12, 1944. A copy of the Court's opinion in the *Allen Bradley* case is annexed to the brief of the United Brotherhood herein as Appendix B.

2. The decision herein is at variance with the rationale of the decisions of this Court in the cases of *Apex Hosiery Co. v. Leader*, 310 U. S. 469; *U. S. v. Hutcheson*, 312 U. S. 219; *U. S. v. International Hod Carriers*, 313 U. S. 539; *U. S. v. United Brotherhood of Carpenters and Joiners of America*, 313 U. S. 539; *U. S. v. Building and Construction Trades Council of New Orleans*, 313 U. S. 539; and *U. S. v. American Federation of Musicians*, 318 U. S. 741.

3. The case presents squarely the question of the proper application of the Clayton and Norris-LaGuardia Acts to an agreement between employers and employees claimed to be in restraint of interstate commerce. Judicial views have been widely divergent concerning the implications to be derived from the much quoted language of Mr. Justice Frankfurter in the *Hutcheson* case that "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and illicit under

Sec. 29 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means. Decisions in the Circuit and District Courts are at variance in cases involving a combination of labor and non-labor groups. It is important that this Court redefine controlling principles since enactment of the Norris-LaGuardia Act. Compare with the instant case and *Allen Bradley Company v. Local Union No. 3; International Brotherhood of Electrical Workers* (*supra*), the following: *Truck Drivers' Local v. U. S.*, 128 F. 2d 227 (C. C. A. 8); *Albrecht v. Kinsella*, 119 F. 2d 1903 (C. C. A. 7); *Gundersheimer's Inc. v. Bakery-Confectionery Workers*, 119 F. 2d 205 (C. C. A. Dist. Col.); *U. S. v. Goedde and Co.*, 40 F. Supp. 523 (E. D. Ill.); *U. S. v. Central Supply Ass'n.*, 40 F. Supp. 964 (N. D. Ohio); *U. S. v. Associated Plumbing and Heating Merchants*, 38 F. Supp. 769 (W. D. Wash.); and *U. S. v. Bay Area Painters and Decorators Joint Com.*, 49 F. Supp. 733 (N. D. Cal.).

WHEREFORE, petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Ninth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the proceedings of said Court herein, being the case numbered and entitled in its dockets as "No. 10,011, *Lumber Products Association, Inc., a corporation, et al., Appellants; United States of America, Appellee.*" and that the judgment of said Court be reviewed by this

Court, and for such other relief as to this Court may seem proper.

Dated: November 4, 1944.

THE BAY COUNTIES DISTRICT COUNCIL OF
CARPENTERS OF THE UNITED BROTHER-
HOOD OF CARPENTERS AND JOINERS OF
AMERICA,

THE UNITED BROTHERHOOD OF CARPEN-
TERS AND JOINERS OF AMERICA,

MILLMEN'S UNION No. 42,

THE UNITED BROTHERHOOD OF CARPEN-
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J. F. CAMBIANO,

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W. L. WILCOX,

CHARLES ROE,

Petitioners.

By JOSEPH O. CARSON, II,
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Attorneys for Petitioners.

HUGH K. McKEVITT,

JACK M. HOWARD,

Of Counsel for Petitioners.

I hereby certify that in my judgment, the foregoing petition is well founded and that it is not interposed for delay.

Dated: November 4, 1944.

HARRY N. ROUTZOHN,
*Attorney for Petitioners and a member
of the bar of this Court.*

BRIEF IN SUPPORT OF PETITION

I

OPINION BELOW

The opinion of the Circuit Court appears in the record pp. 1674-1696 and is reported in 144 Fed. 546.

A copy of the opinion is annexed to the brief of United Brotherhood herein as Appendix A.

II

STATEMENT OF FACTS

1. The Indictment

Stripped of conclusions and characterization, the ultimate factual charge of the indictment is that defendants effectuated a conspiracy to restrain interstate trade in millwork and patterned lumber by defendant employers acceding to wage scale demands of defendant unions in return for which defendant unions agreed not to handle or work on material manufactured under a lesser wage scale (R. 4-37).

2. The Evidence

The case grew out of a trade movement which began about 1935 to overcome the open shop existing in the San Francisco Bay Area since about 1920 and to unionize the industry in that locality (R. 605, 803, 812-814). *Cl. Industrial Ass'n v. U. S.* 268 U. S. 64.

In 1935 Local Union No. 42 (San Francisco) obtained an agreement with the employers. In 1936 the agreement containing the so-called restrictive clause was negotiated.

The evidence shows without conflict that such clause was not included at the instance of defendant employers but of defendant unions; that the list of material exempted from the restriction was added at the insistence of the employers over the objection of the unions as a qualification of the latter's complete closed shop demand. The purpose in seeking a closed shop was the normal objectives of jobs for union members and the increase and standardization of wages. The primary motive was to meet a purely local situation existing in the San Francisco Bay Area. The employers were going around the block and buying non-union material and causing the men to work on it. This defeated closed shop principles and the organization efforts directed to the local shops. The result was paragraphs 16 and 17 of the 1936 agreement (R. 283), claimed by the Government to be the *modus operandi* of the conspiracy (R. 608-612; 648-657; 665, 666; 740, 741; 759-765; 792, 797-799, 802, 803; 815, 816; 829-833, 887-894).

The wage scale of $82\frac{1}{2}\text{¢}$ - $92\frac{1}{2}\text{¢}$ an hour established by the agreement was not fixed by defendant employers acceding to union demands. It represented a compromise only after the dispute had been carried to the point of arbitration. The scale was accepted by the combined votes of Local Unions No. 42 (San Francisco) and No. 550 (Alameda), after being denounced, however, in the meeting of Local No. 42 as a wage proportionate to truck drivers and not suitable to skilled mechanics. The vote of Local No. 42 was 242 against and 90 for accepting the scale. It was approved by majority vote of the two local unions only, because of the overwhelmingly favorable vote of Local No. 550, Alameda County having been almost totally unorganized until gaining closed shop provisions under this 1936 agreement (R. 1018-1023; 813; 814; 426, 427; 759).

The agreement of 1938 which carried forward similar so-called restrictive clauses in slightly different form contained a wage scale fixed by arbitration, Judge Walter Perry Johnson, a retired state court Judge, having acted as impartial arbitrator (R. 614-617; 768-770).

In the activities of union defendants ascribed by the Government as being in furtherance of the alleged conspiracy by enforcement of the restrictive clauses of the agreement, there is no suggestion of violence or other unlawfulness of method.

Neither was there an iota of evidence to support an allegation of the circulation of price lists and price fixing.

III ARGUMENT

A. The decision herein errs in holding the indictment and the evidence were sufficient.

1. In the interest of brevity we will discuss the sufficiency of the indictment and of the evidence together. In passing, we observe that as above indicated there were variances between charge and proof. It should also be noted that the recital of facts in the Circuit Court's opinion is predicated solely upon the indictment and does not purport to be a review of the evidence.

Our basic position is that the factual as distinguished from the conclusory charges of the indictment and the evidence both relate to conduct immunized from being a violation of the Anti-trust Law by the Clayton and Norris-LaGuardia Acts.

We believe, as indicated by the foregoing recital of facts, that the evidence shows that the purpose which actuated the union defendants in making and enforcing the restrictive provisions of the agreements was to gain their own objectives and promote their own self-interest. Their ends were to obtain a closed shop and standardization of wages upward.

It further appears that such agreement was made in settlement of a labor dispute involving conditions of employment resulting directly from union demands centered

on those ends. Such is the true effect of the evidence notwithstanding rulings which excluded a direct showing of motive, purpose and intent, as well as evidence that the union activities related to a continuing labor dispute with their own employers and others in the industry.

Clayton Act, Secs. 6, 20;

Norris-LaGuardia Act;

Apex Hosiery Co. v. Leader, 310 U. S. 469;

U. S. v. Hutcheson, 312 U. S. 219;

U. S. v. International Hod Carriers, 313 U. S. 539;

U. S. v. United Brotherhood of Carpenters and Joiners of America, 313 U. S. 539;

U. S. v. Building and Construction Trades Council of New Orleans, 313 U. S. 539;

U. S. v. American Federation of Musicians, 318 U. S. 741;

New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552;

Milk Wagon Drivers Union v. Lake Valley Farm Products, Inc., 311 U. S. 91;

Allen Bradley Company v. Local Union No. 3, International Brotherhood of Electrical Workers (C. C. A. 2—No. 335—Oct. 12, 1944);

Gundersheimer's, Inc. v. Bakery-Confectionery Workers, 119 F. 2d 205 (C. C. A. Dist. Col.);

Albrecht v. Kinsella, 119 F. 2d 1003 (C. C. A. 7);

E. S. v. Goedde and Co., 40 F. Supp. 523 (E. D. Ill.).

2. The agreement not to handle material produced under a lesser wage scale also meets the test of reasonableness under the "rule of reason".

Apex Hosiery Co. v. Leader, 310 U. S. 469, 506;

Window Glass Blowers v. U. S., 263 U. S. 403.

3. We respectfully urge that the fundamental fallacy in the decision of the Circuit Court is the holding that when once an agreement is reached between employer and labor groups, any immunities arising from the Clayton and Norris-LaGuardia Acts which attended the negotiation of the agreement are shed. Such an hypothesis is inherently wrong, and destructive of the very purposes fostered by these statutes. It is axiomatic that if labor can lawfully demand a closed shop as to men or materials, employers can lawfully agree to that demand.

Allen Bradley Co. v. Local Union No. 3; International Brotherhood of Electrical Workers (supra);

U. S. v. Bay Area Painters and Decorators Joint Com., 49 F. Supp. 733, 738 (N. D. Cal.).

B. The opinion of the Circuit Court is unsound in finding no prejudicial error in the trial rulings.

1. By instructions and evidentiary rulings the District Court completely emasculated any possible defense under the Clayton or Norris-LaGuardia Acts. These statutes were held as a matter of law not to constitute a defense, and any question of fact arising thereunder was expressly excluded from the jury. The decision of the Circuit Court herein quotes by way of example a portion of one instruction complained of (R. 1696) and found no prejudicial error. Besides the instruction quoted by the opinion that "It would constitute no defense under the law, either to the employer defendants or to the union defendants that the agreement or understanding may have been arrived at in settlement of a labor dispute; * * *", the jury was told that a motive on the part of the labor union defendants to promote their self-interest would not be a defense (R. 1552); that it was immaterial whether excluded material was union or non-union, and that "The sole question is

whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants" (R. 1554). The full charge of the Court to the jury is found in the record, pp. 1132-1155.

The evidentiary rulings were of like import. We cite the following by way of illustration.

The union negotiators for the collective bargaining agreement were denied the right to testify concerning motive, intent, or the purpose or objective with which they acted (R. 1483-1485).

Defendants were not allowed to show that material testified about in the Government's case was non-union (R. 1457).

The Court excluded evidence that certain firms in the Northwest, which were the source of material testified about in the prosecution's case, were not organized by the United Brotherhood or entitled to the United Brotherhood label (R. 1499).

Defendants were denied the right of cross examination to show that material was C. I. O. (R. 1456).

Defendants were not permitted to prove the existence of a labor dispute with the C. I. O., both in California and the Northwest, and the relation thereto of their activities (R. 1501; 1497).

These rulings left to the jury the single question of whether the employer-employee agreements not to purchase or work upon material manufactured under a lesser wage scale affected material manufactured in states other than California. In effect, the agreement was ruled illegal per se if it affected material from outside the state.

Completely withdrawn from the jury was any question of fact as to whether the agreement resulted from a bona fide labor dispute. Likewise excluded was any issue of fact concerning the intent, motive, end, purpose or objective of the union defendants.

The decision herein now stands as a precedent for such an interpretation and application of the Clayton and Norris-LaGuardia Acts.

Implicit in the opinion of this Court in the *Hutcheson* case is the view that where a union has combined with non-labor groups the end, to which its activities have been the means, should be considered.

Every Circuit Court considering the question, except in the instant case, has so construed and applied the rule. In *Truck Drivers Local v. U. S.*, 128 F. 2d 227 (C. C. A. 8) it was held that where labor acts alone no intent to violate the Sherman Act can exist as a matter of law, but where it undertakes to act jointly with a non-labor group, the law permits the purpose or intent of the labor group to become a question of fact.

The decision herein is not only in direct conflict with the majority opinion in *Allen Bradley Company v. Local Union No. 3, etc.* (*supra*), but is in fact inconsistent with the dissent therein of Judge Swan who believed a modified injunction permissible, predicated upon a finding of purpose to exclude articles from the New York market merely because manufactured outside the state. Here the purpose of the unions was ruled immaterial.

2. The decision herein also condones as not prejudicial error instructions and refusals to instruct upon the subject of responsibility for the acts of others; or for personal acts, as follows:

The District Court instructed to the effect that the labor union organizations, being unincorporated associations, were liable for the act of an agent done within the scope of his authority, or an act he had assumed to do for the union while performing duties actually delegated to him (R. 1530).

The Court declined to instruct to the effect that a labor union could not be found guilty for an unlawful act, if any, of individual officers or agents, except upon clear

proof that the union participated in or actually authorized such act, or ratified it after actual knowledge thereof (R. 1532, 1533).

The result is that the Court, entirely without precedent, applied the Civil rule of *respondet superior*.

This directly violates Sec. 106 of the Norris-LaGuardia Act, requiring clear proof of actual authorization or ratification after actual knowledge.

It also conflicts with the general rule that criminal liability must be founded upon authorized acts and such authority will not be presumed.

Coronado Coal Co. v. United Mine Workers, 268

U. S. 295;

U. S. v. International Fur Workers, 100 F. 2d 541, 547 (C. C. A. 2);

Truck Drivers' Local v. U. S., 128 F. 2d 227, 236 (C. C. A. 8).

CONCLUSION

The writ of certiorari should be granted.

Dated: November 4, 1944.

Respectfully submitted,

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APPENDIX

Sherman Act—Sec. 1: Trusts, etc., in restraint of trade illegal; penalty.—Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding \$5000.00, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

(July 2, 1890, 26 Stat. 209, 15 U. S. C. Sec. 1.)

Clayton Act—Sec. 6: Antitrust laws not applicable to labor organizations.—The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock, or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

(Oct. 15, 1914, 38 Stat. 731, 15 U. S. C. Sec. 17.)

Clayton Act—Sec. 20: No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between person employed and persons seeking employment, involving or

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growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; or shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

(Oct. 15, 1914, 38 Stat. 738, 29 U. S. C. 52.)

Norris-LaGuardia Act—Sec. 102: Public policy of the United States. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority

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are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

Sec. 104: Grounds for injunction limited. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

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(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other person to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

Sec. 105: Same combinations or conspiracies. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

Sec. 106: Member of union when not liable for acts of others. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of such acts, or ratification of such acts after actual knowledge thereof.

Appendix

Sec. 113: What constitutes labor dispute; participants; courts included. When used in this Act, and for the purposes of this Act:

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is: (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employees or associations of employees; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation

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of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

(Mar. 23, 1932, 47 Stat. 70, 29 U. S. C. Secs. 102 to 113.)

FILE COPY
No. 667

IN THE

Supreme Court of the United States

October Term, 1944

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, ET AL.

Petitioners

vs.

THE UNITED STATES OF AMERICA,

Respondent

BRIEF FOR PETITIONERS,

The Bay Counties District Council of Carpenters, et al.

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No. 667

IN THE
Supreme Court of the United States
October Term, 1944

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, THE UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, MILLMEN'S UNION NO. 42, THE
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, MILLMEN'S UNION NO. 550, J. F. CAMBIANO, C. H.
IRISH, W. P. KELLY, EMIL H. OVENBERG, W. L. WILCOX AND
CHARLES ROE

Petitioners

vs.

THE UNITED STATES OF AMERICA,

Respondent.

BRIEF FOR PETITIONERS
The Bay Counties District Council of Carpenters, et al.

I

OPINION BELOW

The opinion of the Circuit Court of Appeals is reported
in 144 F. 2d 546. The District Court did not render an
opinion.

II

STATEMENT OF JURISDICTION

The jurisdiction of this Honorable Court is under Section 240 (a) of the Judicial Code, 28 U. S. C. sec. 347(a).

Federal Statutes involved are the Sherman Act, sec. 1, 15 U. S. C. 1, the Clayton Act, 15 U. S. C. 17, and 29 U. S. C. 52, and the Norris-LaGuardia Act, 29 U. S. C. 102 *et seq.*

III

**STATEMENT OF THE CASE AND
QUESTIONS INVOLVED**

These petitioners are local labor union organizations and individual officers or collective bargaining representatives thereof affiliated with the United Brotherhood of Carpenters and Joiners of America of the American Federation of Labor.

They were convicted of violating Section 1 of the Sherman Act after trial by jury upon an indictment charging them with having conspired and combined with employer defendants to restrain shipment in interstate commerce of millwork and patterned lumber into the San Francisco Bay Area, particularly from Washington and Oregon.

A second count of the indictment alleged that the defendants combined and conspired to monopolize within the same area a part of the trade and commerce in millwork and patterned lumber among the several states in violation of 15 U. S. C., Section 2. This count was dismissed at the request of the Government at the beginning of the trial (R. 139).

* Pertinent provisions of these statutes are quoted in Appendix, page 75 *et seq.*

One employer group affiliated with Lumber Products Association, Inc. pleaded *nolo contendere* (R. 106-109). Defendants in the other employer group affiliated with Commercial Fixture and Store Front Institute were tried and convicted with the union defendants and did not prosecute an appeal (R. 138).

The judgment of the Circuit Court of Appeals under review affirmed the judgments of conviction as to these petitioners and the defendants United Brotherhood of Carpenters and Joiners of America and Alameda County Building and Construction Trades Council. The latter two defendants are before this Court through separate petitions for certiorari. It also affirmed the judgments based upon the *nolo contendere* pleas of the Lumber Products Association employer group. The Circuit Court reversed as to three union officers or business agents who were held to be immunized from prosecution by reason of having been compelled to testify before the grand jury which returned the indictment concerning the transactions, matters and things upon which the indictment was found. The Government did not seek review of this portion of the judgment of the Circuit Court which is now final (144 F. 2d 546, 555).

The questions involved, stated generally, relate to the position of a trade union under the Sherman Law, as affected by the Clayton and Norris-LaGuardia Acts. They arise upon the sufficiency of the indictment and proof to show a violation of the Sherman Act, and upon the instructions and refusals to instruct and evidentiary rulings which in effect denied application of the latter two statutes as a matter of law.

The questions are more specifically stated in our petition for certiorari as follows:

1. Is an agreement arrived at through the process of collective bargaining between unions and employers engaged in a local industry that " . . . no material will

be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors, that do not conform to the rates of wage and working conditions of this agreement" illegal per se under the Sherman Anti-trust Law if enforced by peaceful, conventional union methods against material in interstate commerce?

2. Would it be a defense for the unions that such agreement settled a labor dispute involving the union demand for a closed shop as to men and materials?

3. Would it be a defense for the unions to show that the direct and primary purpose of the demand for a closed shop was to unionize all local plants in the industry with the ultimate objective of better wages and improved working conditions?

4. Where a union does combine with non-labor groups through a collective bargaining agreement covering terms and conditions of employment, should the end, objective or purpose of the union be considered where an illegal restraint of interstate trade is claimed to have been intended or to have resulted from peaceful enforcement of the agreement?

5. Was the jury properly instructed that the "sole question is whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants" (R. 1554)?

6. Was the jury properly instructed that it would constitute no defense under the law, either to employer defendants or labor union defendants, that such agreement was arrived at in settlement of a labor dispute; or that the motive of the labor union defendants was to promote their self-interest (R. 1534-1537, 1552, 1553)?

7. Was the jury properly instructed that it should not consider whether the millwork and patterned lumber involved in the testimony in the case was union and bore a union label (R. 1554)?

8. Was the jury properly instructed that defendant union organizations, being unincorporated associations, were responsible for the act of an agent which the agent assumed to do for the union while performing duties actually delegated to him (R. 1530)?

9. Was it error not to give a requested instruction to the effect that an officer of a union is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy, but that to bind a union it is necessary to find that the union participated in, or actually authorized the act, or ratified it after actual knowledge (R. 1532, 1533)?

10. Was it error not to give a requested instruction to the effect that no individual defendant who was an officer or member of a union should be convicted for an unlawful act, if any, of another officer or member of the union, except upon clear proof that such individual defendant actually participated in or actually authorized such act, or ratified it after actual knowledge thereof (R. 1533)?

11. Where the Government charged that an agreement between employers and employees was made and enforced with the objective of destroying competition of material in interstate commerce and was allowed to prove picketing or refusals to work upon material originating outside the state, should the defendants have been permitted to show that such material was non-union or produced under sub-standard labor conditions?

12. Where the Government was allowed to prove as overt acts under the alleged conspiracy the picketing and advertising of material as unfair, should the union defendants have been allowed to show the material was C. I. O. and that they were acting in connection with an industrial war and labor dispute with such rival union, arising from the counter trade movement of the latter to unionize the industry both in California and in the Northwest?

IV

SPECIFICATION OF THE ASSIGNED ERRORS TO BE URGED

The trial was long and the evidence extensive. Rulings adverse to petitioners were numerous. As a consequence, many assignments of error have been made, but they fall into groups in relation to the questions before stated (R. 1441). Mindful of the desirability of minimizing those to be urged in order to focus attention upon the principal points, but with the desire to present the basic questions in all of their proper aspects, we specify the following assignments of error to be relied upon:

Numbers 1, R. 1442; 2, R. 1443; 4, R. 1443; 55, R. 1534; 56, R. 1537; 76, R. 1552; 77, R. 1554; 54, R. 1533; 50, R. 1529; 51, R. 1532; 52, R. 1532; 53, R. 1533; 84, R. 1558; 88, R. 1561; 89, R. 1562; 74, R. 1551; 75, R. 1552; 112, R. 1574; 81, R. 1556; 97, R. 1566; 30, R. 1483; 14, R. 1457; 39, R. 1499; 40, R. 1499; 15, R. 1457; 41, R. 1501; 42, R. 1504; 13, R. 1456; 12, R. 1456; 36, R. 1497; 20, R. 1469; 31, R. 1485; 26, R. 1481; 25, R. 1474.

V

ARGUMENT OF THE CASE

POINT I

The conduct involved is immunized from being a violation of the Sherman Act by the Clayton and Norris-LaGuardia Acts. It was also lawful under the rule of reason.

In view of the number of separate briefs to the filed covering the same points, and in the interest of brevity we are combining the argument directed to the sufficiency of the indictment and the evidence. It is based upon the following assignments of error.

The Court erred in overruling the demurrer of these appellants to the indictment in that the indictment fails to state facts constituting a public offense against these appellants or any of them.

(Assignment No. 1, R. 1442.)

The Court erred in denying the motions of these appellants to dismiss based upon the insufficiency of the indictment to state an offense.

.(Assignment No. 2, R. 1443.)

The Court erred because of the insufficiency of the evidence in denying the motions of these appellants made at the conclusion of the plaintiff's case, and repeated at the close of the case, to dismiss or for a directed verdict of acquittal, and made upon the grounds:

That there was insufficient evidence to show a violation of the Sherman Act (26 Stat. 209) by these appellants, or any of them; and

that the evidence affirmatively showed the appellants were acting in connection with or as a result of a labor dispute, and any acts shown in the evidence were immunized by the Clayton Act (38 Stat. 730, sec. 6-20) and the Norris-LaGuardia Act (47 Stat. 29); and

that plaintiff failed to prove the allegations of paragraph 29 of the indictment referring to the lack of a labor dispute and that the unions were not carrying on legitimate objectives of labor; and

that as to each appellant there was a lack of any clear proof that he or it participated in, authorized or ratified any unlawful act; and

that there was no proof of an unlawful intent on the part of any appellant.

(Assignment 4, R. 1443.)

A. Summary of the Indictment.

Epitomizing the contents of the indictment (R. 4) we find that Section I specifies the period of time covered by the acts charged; Section II defines certain terms employed; Section III describes the nature and volume of interstate commerce involved and alleges a decrease in the interstate shipment of such commerce consisting of millwork and patterned lumber since the formation of the alleged conspiracy and combination; Section IV names the employer and labor defendants and sets forth their respective affiliations; and Section V alleges that the employer defendants control substantially all of the millwork and patterned lumber manufactured in the San Francisco Bay area and that they employ only members of the defendant union organizations with whom are affiliated all laborers skilled in such manufacture. To this point the indictment is purely introduction, inducement and background. Neither such material nor any opprobrium by which it is characterized by the pleader can constitute the offense sought to be charged.

We come then to the accusatory portion of the indictment in Section VI (R. 26) where it is alleged the defendants have engaged in a combination and conspiracy to unduly, unreasonably and directly restrain interstate trade and commerce in millwork and patterned lumber to restrict shipments into the San Francisco Bay area and raise and maintain prices of such millwork and patterned lumber. After the foregoing generalities and conclusions we finally reach the legal kernel in the charge that to effectuate such conspiracy defendant employers acceded to wage scale demands of defendant unions, in return for which defendant unions agreed to and have engaged in activities preventing the sale and shipment of millwork and patterned lumber into the San Francisco Bay area by manufacturers outside of California. That pursuant to said agreement defendants on or about September 21, 1936; entered into an agreement covering the wages to be paid members of defendant unions, in which agreement it was agreed that " . . . no material will be purchased from; and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement"; that defendants have continued such provisions in force by subsequent agreements.

Overt acts to enforce such provisions are then enumerated, that defendants have maintained a joint conference board, circulated price lists, interchanged information relative to interstate shipments of patterned lumber and millwork, and prevented interstate shipments by pickets and threats to picket.

Finally there are purely conclusory averments to the effect that in joining and carrying out the conspiracy, defendant unions were not carrying out objectives of labor or acting in a labor dispute, but solely to restrain interstate trade and maintain prices.

B. Summary of the Evidence

The case grew out of a trade movement which began about 1935 to overcome the open shop existing in the San Francisco Bay area since about 1920 and to unionize the industry in that locality (R. 605, 803, 812-814).

In 1935 Local Union No. 42 (San Francisco) obtained an agreement with the employers. In 1936 the agreement containing the so-called restrictive clause was negotiated.

The evidence shows without conflict that such restrictive clause was not included at the instance of defendant manufacturers but of defendant unions; that the exempt list made a part of the restrictive clause was added at the insistence of the employers and over the objection of the unions as a qualification of the latter's complete closed shop demand. The language was patterned upon previous contract forms used by various members of the San Francisco Building Trades Council since 1903 (R. 760-762). The motive of the union in seeking a closed shop was to achieve its normal objective to create jobs for the union members, standardize wages and obtain a proper wage scale. In the policy of the closed shop lies the union's answer to the employers' argument that they could not pay a proper scale because of the competition of low wage scale material. Such policy is the very foundation for unionization of an industry. The primary purpose of the unions was to meet a local situation. The employers were going around the corner and buying non-union material and causing the men to work on it. The union stamp would thus be acquired for the finished product contrary to closed shop principles. This defeated organization efforts directed primarily toward all of the local shops. At the same time the employers claimed the union was violating its own principles by allowing its union members to work under non-union conditions at a wage scale less than established in 1935. The result was paragraphs 16 and 17 of the 1936 agreement (R. p. 283), claimed by the Government to be the *modus*

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operandi of the conspiracy (direct examination of J. G. Ennes, R. pp. 608 to 612; cross-examination of J. G. Ennes, R. pp. 648 to 657; redirect examination of J. G. Ennes, R. pp. 665, 666; direct examination of John Mullen, R. pp. 740, 741; direct examination of William P. Kelly, R. pp. 759 to 765; cross-examination of William P. Kelly, R. pp. 792, 797 to 799, 802, 803; direct examination of Emil H. Ovenberg, R. pp. 815, 816; direct examination of David H. Ryan, R. pp. 829 to 833; cross-examination of David H. Ryan, R. pp. 887 to 894).

The wage scale of eighty-two and one-half ($82\frac{1}{2}$) cents and ninety-two and one-half ($92\frac{1}{2}$) cents per hour established by the agreement of September 21, 1936, was in no sense fixed by the defendant manufacturers according to the wage scale demands of defendant unions. It represented a compromise reached only after the dispute had been carried to the point of an arbitration agreement to fix the scale. The union demands were: 1, a closed shop for Alameda County; 2, a forty (40) hour week, and 3, minimum wage scale of \$1.12 $\frac{1}{2}$ an hour. After the union shop and matter of hours had been agreed upon, the employers' proposition of 80 cents and 90 cents for millmen in San Francisco and Alameda was rejected—the vote of Local 42 (San Francisco) being 229 against to none favoring the offer. After the matter had been carried to the point of selecting arbitrators to determine the scale the proposal of the millmen and cabinet manufacturers was accepted by the combined votes of Local 42 (San Francisco) and 550 (Alameda), but only after being denounced in the meeting of Local 42 as a wage proportionate to truck drivers and not suitable to skilled mechanics and the vote of Local 42 was 242 against and 90 for accepting the proposal. The agreement was approved by majority vote of the two locals only because of the overwhelmingly favorable vote of Local 550, Alameda County having been almost totally unorganized until gaining closed shop provisions under this 1936 agreement (R. pp.

1018 to 1023; direct examination of Emil H. Ovenberg, R. pp. 813; 814; R. pp. 426, 427; direct examination of William P. Kelly, R. p. 759).

The agreement of 1938 which carried forward similar so-called restrictive clauses in slightly different form contained a wage scale fixed by arbitration, Judge Walter Perry Johnson, a retired state court Judge, having acted as the impartial arbitrator. It is therefore obvious that in neither agreement did the scale result from an accession by the employers to union demands in exchange for restrictive activities against interstate commerce (direct examination of J. G. Ennes, R. pp. 614 to 617; R. pp. 768 to 770).

In 1938 the demand of the millmen's unions was for the same rate as received by the carpenters (R. p. 782). The arbitration award was for \$9.00 per day (direct examination of J. G. Ennes, R. pp. 620, 621). A group of Alameda employers claimed they were not bound by the award and declined to increase the scale from \$8.00 (direct examination of William P. Kelly, R. pp. 771 to 774). The ultimate result was the 1938 agreement providing for a scale of \$8.50, but making it uniform for six counties, namely, San Francisco, Alameda, Contra Costa, Marin, San Mateo and Santa Clara. Local 42 (San Francisco) was prevailed upon to accept a 50 cents reduction from the award in order to get a uniform agreement for the six counties (direct examination of William P. Kelly; R. pp. 771 to 774; direct examination of David H. Ryan, R. pp. 834 to 839; direct examination of Joseph F. Cambiano, R. pp. 1034, 1035).

The difference in language between the so-called restrictive clauses as contained in paragraph 16 of the 1936 agreement (Exhibit 131, R. p. 283) and paragraph 17 of the 1938 contract (Exhibit 132, R. p. 289) as modified (Exhibit 123-8, R. p. 561), arose in this manner. In 1936 a counter trade movement in the mill and building industry promulgated by the C.I.O. became active in the North-

west and on the Pacific Coast. This engaged the activities of the United Brotherhood of Carpenters and Joiners of America and in the fight to combat it led to the establishment by the latter in the Northwest of certain non-beneficial local unions (direct examination of Emil H. Ovenberg, R. pp. 817, 818). This term then designated local unions who were not entitled to full membership status because of their low wage scale. Because of this they were not entitled to the use of the brotherhood stamp (cross-examination of William P. Kelly, R. p. 779). During the currency of the 1936 contract agitation arose among certain of the members of defendant local unions to carry out a policy of refusing to handle or work on the materials produced by such non-beneficial locals even though entitled to the stamp, because of the disparity in labor conditions under which it was manufactured. This internal question of union policy was determined by a ruling of the United Brotherhood of Carpenters and Joiners of America that any material bearing its stamp must not be discriminated against regardless of the working conditions under which it was produced (direct examination of Walter C. O'Leary, R. p. 982). When the proposed provisions of the 1938 contract came to the attention of William L. Hutcheson, president of the United Brotherhood, he became concerned that they might be construed as contrary in intent to the requirement that the stamp be invariably recognized. The resultant changes were to clarify the agreement as to this intent (cross-examination of David H. Ryan, R. pp. 896 to 901).

In the activities of the union defendants ascribed by the Government to be in furtherance of the restraints by enforcement of the restrictive clauses of the agreements, there is no suggestion of violence or other unlawfulness of method. Nor is there the slightest indication of profit to a union representative for wrongful use of his office. In

connection with the evidence we also call attention to the fact that although the indictment alleged the circulation of price lists and price fixing as an overt act (R. pp. 31, 32) there was not an iota of evidence produced to support such charge. These are, of course, negative affirmations as to the state of the record and we invite the Government to point out anything to the contrary.

C. The Law

(a) Application of the Clayton and Norris-LaGuardia Acts.

It is now established that

"* * *, whether trade union conduct constitutes a violation of the Sherman Law is to be determined only by reading the Sherman Law and Sec. 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct."

U. S. v. Hutcheson, 312 U. S. 219, 231 (1941).

Pertinent portions of those statutes are set forth in the Appendix, pp. 75-80.

It is, of course, essential to evaluate the force of these controlling statutes in the light of the cases. We feel it unnecessary at this point, however, to retrace the line of Supreme Court decisions beyond *Apex Hosiery Co. v. Leader*, 310 U. S. 469, (1940), because of the landmark this opinion affords in its review of the history of the Sherman Act, particularly in its application to labor cases.

This Court held that apart from the immunity of the Clayton Act (violence was present) a sit-down strike and plant seizure were not restraints within the Sherman Act. The following significant conclusions with direct bearing on the instant case can be summarized as follows:

While labor unions are to some extent and in some

circumstances subject to the Act, it does not apply to all labor union activities affecting interstate commerce. The Act is to be interpreted in the light of its legislative history and the particular evils at which it was aimed.

Such history and the decisions interpreting the Act show it was not aimed at policing interstate movement of goods. It was designed to prevent restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market.

Restraints at which the Sherman Law is aimed are only those which are comparable to restraints deemed illegal at common law—those which are unreasonable or undue. Restraints upon competition or on the course of trade are not enough unless shown to have or be intended to have an effect upon prices or otherwise deprive purchasers of the advantage of free competition.

U. S. v. Brigs, 272 U. S. 549 and *Local 167 v. U. S.*, 291 U. S. 293, are cases of a labor organization being used by combinations of those engaged in an industry as the means for suppressing competition or fixing prices.

Successful union activity such as consummation of a wage agreement with employers may influence price competition by eliminating such part as is based upon difference in labor standards. But the elimination of price competition based on differences in labor standards is the objective of any national labor organization and this effect is not the kind of curtailment of price competition prohibited by the Sherman Act. Federal legislation aimed at eliminating competition based upon labor conditions regarded as substandard, through industry wide standards by collective bargaining, and legislation setting up minimum wage and hour standards supports the conclusion Congress does not regard effects upon competition from such combinations and standards against public policy or condemned by the Sherman Act.

Duplex Co. v. Deering, 254 U. S. 443, which condemned a secondary boycott and *Bedford Co. v. Journeymen Stone Cutter's Assn.*, 274 U. S. 37, involving a refusal of a union to work on a non-union product in the hands of a purchaser held that nothing in the Clayton Act legalized such activities but applicability of the rule of reason to restraints upon commerce affected by a labor union in order to promote and consolidate the interests of its union was not considered by those cases.

Other references will be made to this instructive opinion as the text is pertinent to the discussion.

We return then to the *Hutcheson* case, *supra*, where by the language hereinbefore quoted therefrom this Court gave efficacy to the Clayton Act and Norris-LaGuardia Act and granted their full impact upon the Sherman Act. At this point it is noteworthy that the *Bedford Stone* and *Duplex Printing Press Co.* cases were expressly rejected by the Court in the following language (p. 236):

"The Norris-LaGuardia Act was a disapproval of *Duplex Printing Press Co. v. Deering*, *supra*, and *Bedford Cut Stone Co. v. Journeymen Stone Cutters Association*, 274 U. S. 37, as the authoritative interpretation of Sec. 20 of the Clayton Act, for Congress now placed its own meaning upon that section. The Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized trade union activities as redefined by the later Act. In this light Section 20 removes all such allowable conduct from the taint of being a 'violation of any law' of the United States', including the Sherman Law."

Following the *Hutcheson* decision come three cases, *U. S. v. Building and Construction Trades Council of New Orleans*, 313 U. S. 539; *U. S. v. United Brotherhood of Carpenters and Joiners of America*, 313 U. S. 539, and *U. S. v. International Hod Carriers*, 313 U. S. 539 (1941), where this Court in *Per Curiam* decisions on motions to

dismiss, upon the authority of *U. S. v. Hutcheson*, affirmed rulings of District Courts which sustained demurrers to indictments.

The decision of the District Court in the *Hod Carriers* case is reported in *U. S. v. Carrozzo*, 37 F. S. 191 (Dist. Ct. Ill.—1941). It is important to observe that the facts showed working agreements between the union and contractors involved in the alleged restraint, whereby the contractors using truck mixers were required to employ the same number of men they would normally employ without the use of the cement mixers. This agreement obviously was of such nature as not to promote any purpose or objective of the employers—but does clearly indicate that the existence of an agreement or combination between employer and employee which effectuates a restraint of trade does not in and of itself bring a union within the interdict of the Sherman Act. It necessarily follows that the end sought by the union activities is material in judging if a violation exists.

In *United States v. American Federation of Musicians*, 47 F. Supp. 304 (N. D. Ill. — 1942), affirmed *Per Curiam* decision reported in 318 U. S. 741, the District Judge said (p. 309):

“The third contention of the Government deserves only a word. Here the employees seek only a contract with their employers for a ‘closed shop’ (in a sense large enough to include a shop which excludes not only non-union workers but also machines) and they seek this contract primarily for their (the servants’) benefit and not for the benefit of a non-labor group. In the Court’s opinion *United States v. Brims*, 272 U. S. 549; 47 S. Ct. 169, 71 L. Ed. 403, and like cases, are not pertinent here.”

After divergent rulings in the lower Courts upon the application of the law in cases involving labor and non-

labor groups,¹ we reach the culmination of the different viewpoints in the instant case and the case of *Allen Bradley Co. v. Local Union No. 3, Etc.*, 145 F. 2d 215 (C.A. 2—1944).

It would serve no useful purpose to paraphrase the exhaustive treatment of the subject contained in the majority opinion in the latter case, or duplicate the copious references to authorities.

The essential factual predicate for the Court's decision in the *Allen Bradley* case was the determination that the union was not acting wantonly, corruptly, or even benevolently for the benefit of the employers but only in what was conceived to be the self-interest of the union. Certainly under reasonable interpretation and fair intentment the record in the instant case can support no different conclusion.

In this connection, we point out that the recitation of facts contained in the decision of the Circuit Court under review is based entirely upon the allegations of the indictment. The indictment charged that the employer group acceded to union wage demands in exchange for an agreement to prevent the sale and shipment to the San Francisco Bay area of products manufactured outside of California. The evidence shows to the contrary that the so-called restrictive clauses emanated from the unions to promote their trade movement for unionization and an increase and standardization of wages. The opinion of the Circuit Court stresses the charge of price fixing and circulation of price lists. There was an entire absence

¹ See, for example, *Truck Drivers' Local v. U. S.*, 128 F. 2d 227 (C. C. A. 8); *Albrecht v. Kinsella*, 119 F. 2d 1003 (C. C. A. 7); *Gundersheimer's Inc. v. Bakery-Confectionery Workers*, 119 F. 2d 205 (App. D. C.); *U. S. v. Goedde and Co.*, 40 F. Supp. 523 (E. D. Ill.); *U. S. v. Central Supply Assn.*, 40 F. Supp. 964 (N. D. Ohio); *U. S. v. Associated Plumbing and Heating Merchants*, 38 F. Supp. 769 (N. D. Wash.); and *U. S. v. Bay Area Painters and Decorators Joint Com.*, 49 F. Supp. 733 (N. D. Cal.).

of proof of such. The indictment is characterized as charging a combination for a direct restraint upon commerce with an objective of destroying competition. From the evidence it clearly appears that the agreement, claimed to effect an illegal restraint, settled a labor dispute whereby the unions gained for their own end the very demands now said to constitute the agency for restraint.

In the *Allen Bradley* case, Justice Swan's dissent states agreement with his colleagues that the injunction was too broad, but indicates a belief that a combination of employers and employees cannot exclude articles from a local market because manufactured outside the state. Applying the rationale of this view to the facts of the instant case, it is to be observed that the so-called restrictive clauses were in no sense geographical. They applied solely to sub-standard material gauged by the working conditions of the agreement.

It is respectfully urged that the fundamental fallacy in the judgment of the Circuit Court of Appeals under review herein is centered in this excerpt from the opinion:

"Here the Manufacturer Group and the Union Group are no longer participating or interested in a labor dispute as that term is used in Section 5 of the Norris-LaGuardia Act. The dispute is past. The labor and non-labor groups are combined. The acts described in Section 4 of that Act and Section 20 of the Clayton Act, some of which are charged in the indictment here to have been committed by the now non-disputant unions and their members and their manufacturing employers are not to secure any legitimate advance of the laborer's interest. . . ."

It is interesting to note that Judge St. Sure, the trial Judge in the instant case, has recanted from the extremity of such a view, as indicated by the following quotations from his decision in *U. S. v. Bay Area Painters and Decorators Joint Com.*, 49 F. Supp. 733 (1943):

"Part of the stated policy of the Norris-LaGuardia Act is to enable the worker to appoint representatives

to negotiate the terms and conditions of his employment, and to free him from certain restraints on activities for the purpose of collective bargaining. So long as these activities fall within the provisions of the Clayton and Norris-LaGuardia Acts, the unions are exempt from prosecution under the Sherman Law.

"The unions must necessarily 'negotiate' and 'bargain collectively' with the employers. It would seem beyond belief that Congress intended to protect the machinery used by labor to enable it to negotiate and bargain collectively for terms and conditions of employment and then, after it completes its negotiations and has made its bargain through agreement with the employers, to withdraw that protection and leave the parties to the agreement liable for prosecution for criminal conspiracy. Such a construction would vitiate the effect of the Clayton and Norris-LaGuardia Acts, for such agreements almost always have some effect on interstate commerce, if only to raise prices by increase in wages or decrease in hours of work.

"In *United States v. Hutcheson, supra*, the Supreme Court said: 'If the facts laid in the indictment come within the conduct enumerated in sec. 20 of the Clayton Act they do not constitute a crime within the general terms of the Sherman Law because of the explicit command of that section that such conduct shall not be "considered or held to be violations of any law of the United States." So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under sec. 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means.'

"From this language it is reasonable to infer that where a union does combine with non-labor groups the end to which its activities have been the means should be considered."

It is axiomatic that if labor can lawfully demand a closed shop as to men or materials then the employers can

lawfully agree to that demand. *Gundersheimers' Inc. v. Bakery-Confectionery Workers*, 119 F. 2d 205 (App. D. C.—1941); *U. S. v. Carrozzo*, 313 U. S. 539.

The nature of the alleged restraint in *United States v. B. Goedde and Co.*, 40 F. Supp. 523 (Dist. Ct. Ill.—1941), bears striking similarity in many respects to that set forth in the indictment in the instant case. There it was charged that employers and employees restrained trade in mill-work and other lumber products with intent to affect prices and free competition, through contracts providing for a closed shop, the use of the union label and exclusion of unlabeled material; that the unions warned they would not use unlabeled material and forced removal of such from jobs and by coercion through strikes and threats to strike forced the use of labeled material. In addition there were charges of refusal to work on material manufactured in other states and enforced use of the label by violence and threats of violence. With reference to the type of activities charged in the instant case, Judge Lindley, who calls attention in his opinion to the fact that he was trial judge in the cases of *United States v. Painters' Dist. Council*, 44 F. (2d) 58, and *Boyle v. United States*, 40 F. (2d) 49, said in part as follows:

"While Mr. Justice Frankfurter does not in so many words disapprove such earlier cases, he does announce that the Norris-LaGuardia Act was passed in an attempt to limit the invalidity of acts of labor unions to the extent that the same had previously existed. He declares that the allowable area of union activity was not to be restrained as it had been in *Duplex Printing Press Co. v. Deering, et al.*, 254 U. S. 443, 41 S. Ct. 172, 65 L. Ed. 349, 16 A.L.R. 196, and the trial courts are instructed by the opinion that whether trade union activities constitute a violation of the Sherman Act is to be determined only by reading it in connection with the Clayton and the Norris-LaGuardia Acts 'as a harmonizing text of outlawry of labor conduct.' (312 U. S. 219, 61 S. Ct. 466, 85 L. Ed.

788.) In other words, if the acts said by the indictment to violate the Anti-Trust Act are legally permissible under the Clayton and Norris-LaGuardia Acts, they do not constitute such a violation. As to such allowable acts, immunity from prosecution exists. It would seem to follow that many of the decisions preceding the Norris-LaGuardia Act are now very largely modified and limited in their effect. Our new yardstick of validity is to be found not in them but in this, the most recent decision of the Supreme Court.

Prior to the passage of the Norris-LaGuardia Act, in 1926, the Supreme Court decided *United States v. Brims*, 272 U. S. 549, 47 S. Ct. 169, 170, 71 L. Ed. 403, and, in the absence of *United States v. Hutcheson*, that decision would control here. * * *

* * * In *United States v. Hutcheson*, supra, Mr. Justice Frankfurter said that, so long as a union acts in its self interest and does not combine with 'non-labor groups,' 'the licit and the illicit under Sec. 20' of the Clayton Act 'are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means.' In his footnote, he cited for comparison *United States v. Brims*, 272 U. S. 549, 47 S. Ct. 169, 71 L. Ed. 403. He did not say that that decision was overruled; nor did he say explicitly that if unions combined with nonunion groups, their acts would be immune. I take it that, by the language used, he held in effect that the doctrine of such cases as *United States v. Brims*, supra, must be modified to this extent, that if the acts or agreements of unions with third persons do not include anything other than the acts legalized by the Clayton and Norris-LaGuardia Acts, then they will not support an indictment; but that to the extent that the acts complained of go beyond the conduct of unions legalized by the same acts, they may be the basis of a valid indictment under the Sherman Act.

In following the prescribed test, let us see which of the alleged means employed and acts of labor unions are exempted from criminal prosecution under the Clayton Act. In the analysis hereinbefore set forth

the acts mentioned under 1 (a) and (b) (Paragraph 48 of the indictment), relating to contracts for closed shops and use of the label are clearly within the legitimate activities of unions as contemplated by the Clayton Act. Under 2(a) (b) (c) and (d) (Paragraph 49), it is alleged that the unions warned builders that they would not work with unlabeled materials; warned purchasers that such material would have to be removed and returned to the manufacturer and forced the makers of such material to remove the same from the job and return it to the plants. It would seem obvious that these acts are likewise granted immunity by the Clayton Act. Under 3 (Paragraph 50) we have alleged intimidation of builders by strikes and threats to strike, thereby forcing them to buy union labeled material, although similar products could be purchased at lower prices in other states. This too is exempt within the language of the Clayton Act. The resulting effect upon interstate commerce is purely incidental, *United States v. Hutcheson*, 312 U. S. 219, at page 241, 61 S. Ct. 463, 85 L. Ed. 788. Each of the acts thus far mentioned apparently is, by the Clayton Act, recognized as a legal economic weapon of labor unions."

(a) Our basic position on the sufficiency of the indictment and the evidence is premised upon three contentions:

(1) The so-called restrictive clauses obviously involved and grew out of labor disputes.

They emanated from the union to effectuate a closed shop as to men and materials and to gain the ultimate end of higher wages and better working conditions. They were the very medium through which the demands were settled.

Norris-La Guardia Act, *supra*, secs. 101, 103:

Milk Wagon Drivers v. Lake Valley Farm Products, Inc., 311 U. S. 91 (1940).

(2) The labor objectives were lawful.

A closed shop agreement is unquestionably legal (National Labor Relations Act, 29 U. S. C., sec. 151), and the elimination of competition from non-union or sub-standard goods is a normal objective of any national trade union. Such is an inherent part of the struggle for jobs and a living wage measured by the standards and requirements of the place where the labor is performed. These things are of the very essence of any union's self-interest and ultimate ends.

Apex Hosiery v. Leader (supra);

Amer. Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184 (1921).

(3) Every act by which the restraint is claimed to have been accomplished was lawful.

There is no suggestion of violence or other malfeasance. An agreement not to work is unquestionably legal,

Norris-La Guardia Act, Section 104.

Picketing is a conventional means of pursuing union objectives.

Thornhill v. Alabama, 310 U. S. 88 (1940).

Threat to do a lawful act attaches no stigma of crime.

McKay and Allied Cases, 16 Cal. 2d 311, et seq. (1940).

A strike or threat of strike is of course in the same category.

Levering v. Morrin, 289 U. S. 103 (1933).

(b) The Rule of Reason

Irrespective of the Clayton and Norris-LaGuardia Acts, there is no showing of an unreasonable restraint upon commerce. The charge of making and carrying out an agreement not to handle or work upon material manufactured under a lesser wage scale clearly shows intrastate transactions, the effect of which would be to impose an indirect restraint, if any. Cf. *Industrial Assn. v. U. S.*, 268 U. S. 64 (1925), where the restraint arose in the construction industry from an attempt to enforce an open shop in San Francisco—in the instant case from an effort to establish a closed shop.

The gaining of a wage scale demand is a proper objective and an agreement not to work on material produced under lower standards of labor is a lawful and proper means. In fact the enactments of Congress indicate that an agreement of such nature is not only legal—but is designed to stimulate rather than impede interstate commerce through the standardization of working conditions in an industry and consequent elimination of industrial strife. See in this connection *Carter v. Carter Coal Co.*, 298 U. S. 238 (1936), which held unconstitutional the "Bituminous Coal Conservation Act of 1935", 49 Stat. 991. Consider also the policy of the statutes referred to in the *Apex* case (*supra*), namely, The National Labor Relations Act, The Public Contracts Act and The Fair Labor Standards Act of 1938. It might be also noted in passing that we had further evidence of the Congressional intent in the National Industrial Recovery Act, 15 U. S. C. Sec. 701, *et seq.*, designed to eliminate cutthroat competition which serves to depress prices and act as a breeding ground for unfair labor practices.

We have seen that the *Duplex Printing Co.* and *Bedford Stone* cases have been rejected for their failure to give proper scope and effect to the Clayton Act. But on the point under discussion the following language in the *Apex* case (*supra*, at p. 506); is equally significant:

"It will be observed that in each of these cases where the Act was held applicable to labor unions, the activities affecting interstate commerce were directed at control of the market and were so widespread as substantially to affect it. There was thus a suppression of competition in the market by methods which were deemed analogous to those found to be violations in the non-labor cases. See *Montague & Co. v. Lowry*, 193 U. S. 38, 45, 46; *Retail Lumber Dealers Co. v. United States*, *supra*; *Paramount Famous Lasky Co. v. United States*, 282 U. S. 30; *United States v. First National Pictures*, 282 U. S. 44. That the objective of the restraint in the boycott cases was the strengthening of the bargaining position of the union and not the elimination of business competition—which was the end in the non-labor cases—was thought to be immaterial because the Court viewed the restraint itself, in contrast to the interference with shipments caused by a local factory strike, to be of a kind regarded as offensive at common law because of its effect in curtailing a free market and it was held to offend against the Sherman Act because it effected and was aimed at suppression of competition with union made goods in the interstate market.

Both the *Duplex Printing Co.* and *Bedford Stone* cases followed the enactment of the Clayton Act and the recognition of the 'rule of reason' in the *Standard Oil* case, *supra*. The applicability of that rule to restraints upon commerce affected by a labor union in order to promote and consolidate the interests of its union was not considered.²⁵

To return then to the debated language of Mr. Justice Frankfurter in the *Hutcheson* case (*supra*) if a proper interpretation is that where a union acts in combination with a non-labor group we do distinguish the licit and illicit by judging the wisdom or unwisdom, the rightness or wrongness or selfishness or unselfishness—i. e., the reasonableness of the restraint—by the end of which the activities are the means—then the agreement not to work on goods which are substandard according to the working conditions established by the contract—clearly meets

the test of reasonableness and lawfulness of end or objective. Limiting the objective to the sole one stated in the indictment—that of wages, the struggle for a living wage—measured in living requirements of San Francisco—must necessarily be fought in a nation-wide arena. The products of sweat shop labor do not lose their competitive effect at city, county or state lines. In this connection the indictment expressly recognizes the existence of mass production machines and lower wages, in the Northwest (R. 7). The national policy as declared legislatively and enunciated by this Court is that wage cutting is not the type of competition which the Sherman Act is designed to force upon labor. On the contrary unbridled competition coming from low wage manufacturers inevitably crushes competition maintaining fair labor standards; ultimately leading to the most vicious monopoly. In the process it also impedes free trade and commerce by the attending industrial strife which inevitably arises.

The conclusion therefore appears to us inevitable that what is charged or proven here is not an unreasonable restraint of commerce—but the accomplishment of a legal end by lawful means, and the indictment and evidence are insufficient in law.

POINT II

Errors in the charge to the jury and evidentiary rulings go to the very heart of the convictions and require reversal.

A. Instructions to the Jury

(A-1) The Court erred in instructing the jury, as follows:

"If you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork manufactured in States outside the State of California; or if you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase and the labor union defendants agreed not to work on any patterned lumber or millwork manufactured under conditions unfair to the employer defendants including patterned lumber and millwork manufactured outside the State of California; such an agreement or understanding would constitute a violation of the Sherman Act as charged in the indictment. It would constitute no defense under the law, either to the employer defendants or to the labor union defendants, that the agreement or understanding may have been arrived at in settlement of a labor dispute; and it would likewise constitute no defense under the law that any such agreement or understanding may have been arrived at as the result of proceedings in arbitration of such a dispute."

To which defendants excepted, as follows:

"We except to the charge that where we find an employer and a labor union defendant agreeing not to purchase lumber under different wage scales and affecting out of state lumber, or where they agree not to work on such material or lumber that is unfair to the employer, that such is a violation in and of itself of the Sherman Act; that there is no defense here by reason of the fact that any contract or agreement or understanding was arrived at in settlement of a labor dispute. The charge that the existence or non-existence of a labor dispute here is immaterial, that is no defense that any contract was as a result of a proceeding, for arbitration of a labor dispute, or as a result of such arbitration." * * * and, "I also wish to except to that portion of your Honor's charge dealing with the matter of the lower wage scale not being a matter of defense, but in effect being a substantial ground for conviction. And to that portion of the charge to the effect that conditions unfair to the employers would not execute the actions here and would in effect, standing alone, constitute a violation of the statute. Further, in that connection, with respect to the fact that in the arrival at the agreement there was no defense, rather, that the agreement was arrived at in settlement of a labor dispute, or in the arbitration of such a dispute being deemed by your Honor not to be a defense."

(Assignment 55, R. 1534.)

This and the next five assignments relate to vital portions of the Court's charge to the jury,¹ and are chosen for discussion at this point as affording the quickest insight into the basis upon which petitioners were tried and convicted. Considered singly or collectively it at once becomes apparent that the charge was tantamount to an instruction to convict. It left to the consideration of the jury the single question of whether the employer-employee agreements not to purchase or work upon material manufactured under a lesser wage scale, affected material man-

1. Full charge to the jury appears R. 1132 *et seq.*

manufactured in states other than California. It removed all questions of fact under the Clayton and Norris-LaGuardia Acts.

It has been seen from a discussion of the evidence under the preceding point, from the testimony of both employer and union defendants, who negotiated the agreements, that the so-called restrictive clauses arose from the union demands for a closed shop and resulted from the employees' objection to working on non-union material. These are clearly legitimate union objectives and relate directly to terms and conditions of employment. The evidence further shows that the employees resisted the demand and gained the concession of exempting certain material from the policy, and that paragraphs 16 and 17 of the 1936 agreement were reached as a settlement of the union demands only after several months of negotiation and dispute. These paragraphs on their face relate to terms and conditions of employment, and are directly relevant to carry out the union objections to working on material considered unfair as measured by the standard of the wage scale established under the agreement. We have argued under the previous topic that the evidence shows without substantial conflict that the case is within the protection of the Clayton and Norris-LaGuardia Acts. Notwithstanding such evidence the foregoing instruction charges flatly that such a provision, if it affects out of state material, violates the Sherman Law and that it would be no defense that it was arrived at in settlement of a labor dispute. This withdrew from the jury the question of fact whether the contract provisions which are the foundation for the prosecution's case resulted from and were agreed upon in settlement of a bona fide labor dispute. The instruction goes to the extreme of denying application of the Clayton and Norris-LaGuardia Acts as a matter of law.

There is no legal support for the instruction in either the statutes or the decisions prior to the one under re-

view. It is the policy of the Federal statutes that employers and employees should bargain collectively and engagement in and settlement of labor disputes by peaceable, conventional means is expressly condoned. It would indeed be an anomaly to hold that once the parties have done what the law exhorts—and reached an agreement fixing the terms and conditions of employment in settlement of a labor dispute—that legality ceases and the agreement becomes a one-way passage to fine or imprisonment. There is nothing in the text of the statutes to justify such a conclusion. On the contrary the Norris-La-Guardia Act (*supra*), Sec. 104-h expressly embraces agreements as being within the protection of the law.

This instruction told the jury that where you find an agreement between employer and employee the effect of which is to place any restraint upon interstate commerce—then it makes no difference what the purpose is behind the agreement—or whether it settled a labor dispute arising from labor's demands as to terms and conditions of employment. If such is the law then this Court overlooked the existence of such an agreement in the cement mixer case. *U. S. v. International Hod Carriers (supra)*. And the employer in the *Gundersheimer Bakery* case (*supra*), could never lawfully settle his labor dispute by agreeing to accede to his employees' demands not to buy cakes made under a lower wage scale in an adjoining state.

(A-2) The Court erred in instructing the jury, as follows:

If you find that the employer and labor union defendants entered into a combination and conspiracy, the object of which was to prevent the purchase or importation by the employer defendants or other persons, firms, corporations, or parties within the State of California of patterned lumber and millwork manu-

factured under conditions unfair to the employer defendants including patterned lumber and millwork manufactured outside the State of California; or if you find that the employer and labor union defendants entered into a combination and conspiracy, the object of which was to prevent the purchase or importation by the employer defendants or other persons, firms, corporations, or parties within the State of California of patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork manufactured outside the State of California, such a combination and conspiracy would constitute a violation of the Sherman Act, as charged in the indictment. It would constitute no defense under the law, either to the employer defendants or to the labor union defendants, that the combination and conspiracy may have been arrived at as the result of the settlement of a labor dispute; and it would likewise constitute no defense under the law that any such combination and conspiracy may have been arrived at as the result of proceedings in arbitration of such a dispute."

To which defendants excepted, as follows:

"We except to the charge that * * * if the parties entered into a conspiracy not to work on material unfair to employers, regardless of their motives or intent on the part of the union defendants, such would constitute a violation of the act—I am referring to the Sherman Act * * * and if a conspiracy was entered into not to purchase or work upon lower wage scale material, affecting materials from outside the State of California, that that in and of itself would constitute a violation of the Sherman Act regardless of motive, intent or objectives with which the Union defendants were acting, and it is no defense that any activities here resulted from labor disputes."

(Assignment 56, R. 1537.)

This is virtually a repetition of the instruction which is the subject of the next preceding assignment and aggravates the error there considered. The only difference was to substitute the words "combination" and "conspiracy" for "agreement" and "understanding". The terms "combination" and "conspiracy" have acquired a sinister aspect from the crimes with which their usage associates them. When it is recognized, however, that a combination or conspiracy is constituted by an agreement, *Lynch v. Magnavox Co.*, 94 F. 2d, 883 (C. C. A. 9—1938), that conspiring or agreeing to do a lawful thing is not unlawful, *McKay v. Retail Auto, etc. Union* (*supra*); and that admittedly the Sherman Act does not condemn all combinations and conspiracies which interrupt interstate transportation, *Apex v. Leader* (*supra*), the fallacy of the instruction clearly appears. Although the *Hutcheson* case (*supra*), page 231, holds that whether trade union activity violates the Sherman Law is to be determined by reading it with Section 20 of the Clayton Act and the Norris-La-Guardia Act as a harmonizing text of outlawry of labor conduct, this instruction denied application of the two latter statutes to the case as a matter of law, presumably because an agreement was reached between employers and employees. Any question of fact as to the circumstances under which the agreement was reached was withdrawn from the jury.

(A-3) The Court erred in instructing the jury, as follows:

"Labor unions or their members may join together in promoting their self-interest, even though their acts in so doing may result in an undue obstruction of interstate commerce. But they can do this only so long as they act in their self-interest and do not combine with non-labor groups. Here the Government charges that the labor union defendants com-

bined and conspired with the non-labor defendants in entering into and doing the things complained of, which charge, if true, is a violation of the Sherman Act. So, if any one or more of the labor union defendants combined and conspired with any one or more of the non-labor defendants, including those pleading *nolo contendere*, to do the things that the Government charges here, even though the motive of the labor union defendants was to promote their self-interest, you must find the defendants, or any of them, who so combined and conspired, guilty as charged,"

To which defendants excepted, as follows:

"I also except to that portion of your Honor's charge which in effect stated that the mere fact of an agreement with a non-labor defendant under the circumstances described in your Honor's charge would amount to a violation of the statute; also in that connection, the statement, in effect, that to promote self-interest was no defense."

(Assignment 76, R. 1552.)

The instruction squarely charged that the motive or intent with which the union appellants acted, i.e., the end or objective sought, was immaterial, though it be entirely to promote self-interest.

The theory upon which such a charge could be founded is not readily ascertained from the statutes or cases. The language of the statute carries no suggestion that an agreement between employers and employees is illegal *per se*, regardless of the nature of the restraint or the end or purpose sought. Agreements involving employer groups alone are tested by the rule of reason, with the qualification in the case of price fixing agreements that reasonableness of price is no defense, and there is certainly nothing in the law to indicate that merely because of the participation of labor a different rule applies. That the opposite is true is illustrated by the case of *Windsor*

Glass Mfgs. v. U. S., 263 U. S. 403 (1923), decided without reference to the Clayton Act.

The only explanation which occurs to us for the instruction is that it is predicated upon a distortion of Mr. Justice Frankfurter's language in the *Hutcheson* case to mean that where you do find an agreement between employers and employees, then regardless of the fact it is brought about by the self-interest of the union, and irrespective of the rightness or wrongness, reasonableness or unreasonableness of the end sought, a violation exists. Such an interpretation would not only take us backward before the enactment of the Clayton and Norris-LaGuardia Acts, but regress beyond the time that the rule of reason was invoked. The language itself bears the opposite implication and indicates that where an agreement between employers and employees exists, then whether the union acted in its self-interest and for a proper end are controlling factors in determining legality.

We need only to revert to the decision in *Apex Hosiery v. Leader*. (*supra*) to know that such a construction as would support the instruction is not possible. There we find unequivocal language to the effect that the elimination of price competition based on difference in labor standards by collective bargaining agreements is the objective of any national union and that the effect of such upon price competition is not the kind of curtailment prohibited by the Sherman Act. It was also pointed out in the *Apex* case that in both the *Bedford Stone* case and *Duplex Printing Co.* cases the fact that the objective of the restraint was the strengthening of the bargaining position of the union and not the elimination of business competition was thought immaterial. Consider then that these two latter cases have been expressly repudiated by the *Hutcheson* case, and in this light let us examine the *Bedford Stone* case and compare it to the instant one. There the restraint consisted in the refusal of the union to work on stone declared unfair and shipped interstate from an

open shop quarry with the purpose and effect of preventing the interstate sale of the stone in competition with the product of unionized producers. The ultimate objective was unionization of the quarries.

In the instant case it is certainly material to determine whether union objectives of unionization and standardization of wages were the purposes for which the union appellants acted—or to restrain competition from outside material for the benefit of their employers. There is not the slightest basis, in precedent or reason, to hold that simply because union objectives have been attained through an agreement with employers designed to eliminate the requirement that they work upon material considered to be unfair, that the motives and objectives of the union which are effectuated by the agreement become immaterial. The cases with direct bearing on this subject could be multiplied indefinitely but we will refer to only a few of the more pertinent.

The subject is discussed in *Truck Drivers' Local v. U. S.*, 128 F. (2d) 227, 232 (C. C. A. 8—1942) as follows:

“The Supreme Court has not undertaken to define the boundaries of the situations in which labor organizations may become subject to the operation of the Sherman Act, and perhaps no such limitative definition is possible or desirable. Its recent opinions have however contained some clear implicational expressions that touch the present situation. Thus, in *Apex Hosiery Co. v. Leader*, supra, at page 501 of 310 U. S., page 996 of 60 S. Ct., 84 L. Ed. 1311, 128 A. L. R. 1044, it was pointed out: ‘This is not a case of a labor organization being used by combinations of those engaged in an industry as the means or instrument for suppressing competition or fixing prices. See *United States v. Brims*, 272 U. S. 549, 47 S. Ct. 169, 71 L. Ed. 403; *Local 167 v. United States*, 291 U. S. 293, 54 S. Ct. 396, 78 L. Ed. 804.’ In *United States v. Hutcheson*, 312 U. S. 219, 232, 61 S. Ct. 463, 466, 85 L. Ed. 788, the Court, speaking through Mr. Justice Frankfurter, again implicationally declared:

'So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under Section 20 (of the Clayton Act) are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means.'

In the Brims and Local 167 cases, cited in the quotation from the Apex Hosiery Co. case, supra, the Court, in affirming convictions under the Sherman Act against a labor and non-labor group, assumed the applicability of the Act to the labor group as part of the combination in the situations involved, but did not specifically discuss the question. In Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association, 274 U. S. 37, 47 S. Ct. 522, 71 L. Ed. 916, 54 A. L. R. 791, the dissenting opinion of Mr. Justice Brandeis, concurred in by Mr. Justice Holmes, pointed out, at page 64 of 274 U. S., page 531 of 47 S. Ct., that in the Brims case, in which both he and Mr. Justice Holmes had concurred, 'the purpose of the combination was not primarily to further the interests of the union carpenters. The immediate purpose was to suppress competition with the Chicago manufacturers.'

(2-4) From the implications of the cases which have been referred to, it seems clear that, if a labor union and its members act wholly by themselves or in conjunction with other labor groups, in the sphere and by the methods recognized in the Clayton and the Norris-LaGuardia Acts, to carry out the legitimate objects of such an organization, in improving or preserving the economic position of labor in industry and its employment relationships and conditions, they are not subject to prosecution under the Sherman Act merely because their acts may incidentally serve to affect and restrain trade or commerce;¹ but that, if

¹ In his dissenting opinion in Duplex Printing Press Co. v. Deering, 254 U. S. 443, 486, 41 S. Ct. 172, 183, 65 L. Ed. 349, 16 A. L. R. 196, Mr. Justice Brandeis said that the Clayton Act in effect "declared that the relations between employers of labor and workmen were competitive relations, that organized competition was not harmful and that it justified injuries necessarily inflicted in its course."

they undertake to act jointly with any non-labor group, whose object is to effect an illegal restraint of trade or commerce, and, as part of a concerted plan or effort, they agree or undertake to do any act, whose purpose may reasonably be construed to be directly intended to assist such non-labor group in accomplishing its illegal purpose, even though the result may also be beneficial to the position of labor, they may become subject to the operation of the Sherman Act. Thus, labor cannot seek to accomplish its legitimate objects through the illegal means of combining or conspiring with a non-labor group to fix or maintain prices on goods moving in interstate commerce without subjecting itself to the possibility of criminal prosecution under the provisions of the Sherman Act.

(5, 6) Perhaps a simple way of translating the two contrasting situations into conventional legal formula would be to say that, in the first, no intent to violate the Sherman Act can exist as a matter of law; and that, in the second, the law permits the purpose or intent of the labor group to become a question of fact. If the evidence is fairly and reasonably susceptible to the interpretation that an agreement or participative collaboration has existed for the purpose of directly assisting a non-labor group to accomplish an illegal restraint, such as fixing or maintaining prices, the facts of the situation, including the purpose or intent of the labor union and its members, will ordinarily, in a criminal prosecution under the Sherman Act, have to be submitted to a jury for its determination."

We do not subscribe to the full doctrine just quoted, if it is to be construed as meaning that labor cannot enforce its own policies even by agreement and combination with employers, because a different motive or intent may exist on the part of such employers. It is also to be observed that the Court did not consider the effect which the existence or non-existence of a labor dispute might have upon the conduct of the parties. Regardless of the line of demarcation which governs the legality or illegality of

labor conduct, it cannot be seriously doubted that the view expressed is sound that labor cannot come within the ambit of the Sherman Act when acting with relation to matters affecting its employment, unless an illegal intent exists to directly assist a non-labor group to accomplish an illegal restraint.

The anomaly is that the Trial Judge in the instant case distinguishes it from the charge of the indictment held by him to be insufficient in the case of *U. S. v. Bay Area Painters* (*supra*), 49 F. Supp. at p. 735, because of difference in purpose. To the instant case is ascribed a purpose to eliminate competition in lumber and millwork from other states. Yet defense on this very issue of purpose was completely foreclosed. The agreement was condemned as to purpose as a matter of law, although patently it related directly to terms and conditions of employment.

The materiality and importance of motive and intent is illustrated by the *Coronado* cases where the difference in the evidence on this exact issue led to opposite conclusions. In *United Mine Workers v. Coronado Co.*, 259 U. S. 344 (1921), the Court deemed the evidence insufficient to show a violation of the Sherman Act where it showed union activity to press unionization of non-union mines, not only as a direct means of bettering conditions and wages of the workers, but also as a means of lessening interstate competition for union operators which would in turn lessen the pressure of those operators for reduction of the union scale, or resistance to an increase. The latter motive was said to be secondary and ancillary, whose actuating force in a particular case depends on the particular circumstances. In the second case, *Coronado Co. v. U. M. Workers*, 268 U. S. 295 (1925), the Court held an instructed verdict for the local unions erroneous where there was sufficient evidence to show that the purpose of the defendants who had unlawfully prevented the manufacture and production of material in interstate commerce was to control the supply or price in interstate markets.

The bearing that intent has upon the existence or non-existence of a violation, where as in the instant case the activities complained of are entirely intrastate, is referred to in *Schechter v. U. S.*, 295 U. S. 495 (1935), at page 547 as follows:

"The distinction between direct and indirect effects has been clearly recognized in the application of the Anti-trust Act. Where a combination or conspiracy is formed, with the intent to restrain interstate commerce or to monopolize any part of it, the violation of the statute is clear. *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 310. But where that intent is absent, and the objectives are limited to intrastate activities, the fact that there may be an indirect effect upon interstate commerce does not subject the parties to the federal statute, notwithstanding its broad provisions. This principle has frequently been applied in litigation growing out of labor disputes. *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, 410, 411; *United Leather Workers v. Herkert & Meisel Trunk Co.*, 265 U. S. 457, 464-467; *Industrial Association v. United States*, 268 U. S. 64, 82; *Levering & Garrigues Co. v. Morrin*, 289 U. S. 103, 107, 108. In the case last cited we quoted with approval the rule that had been stated and applied in *Industrial Association v. United States*, *supra*, after review of the decisions as follows: 'The alleged conspiracy and the acts here complained of, spent their intended and direct force upon a local situation,—for building is as essentially local as mining, manufacturing or growing crops,—and if, by a resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances, that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act.'"

In *U. S. v. Brims*, 272 U. S. 549 (1926), the case upon which principal reliance is placed to support the convictions, it is significant that the Court held that the evidence reasonably tended to show the combination was brought

about for the purpose of eliminating competition from outside material, and as intended by all the parties such competition was cut down and interstate commerce thereby directly impeded. It is apparent that the basis of the decision is that this intent and purpose of the parties was the reason their conduct was illegal.

It is also noteworthy that the draftsman of the indictment considered it material to allege that the union defendants were not acting to promote any legitimate objective of labor or in a labor dispute. It is perfectly obvious from this that it was the Government's own theory of its case that the unions were not acting in their own self-interest, except, perhaps, to receive increased pay, in exchange for using their economic weapons to assist the employers to stifle competition.

The reason for this is no farther away than the express language of the statute under which the case was brought, for as amended by Section 6 of the Clayton Act it provides that nothing in the anti-trust laws shall be construed to forbid the existence and operation of a labor organization, or restrain individual members from carrying out the legitimate objects thereof.

If this is not enough to make the motive, intent and object with which a labor defendant acts material when charged with a violation of the law, and we can conceive of no good reason to ignore the plain language of the statute, then apart from the position of labor, the intent with which the parties acted was still vital and material to judge the effect of the agreement and activities of defendants upon interstate trade. The language of Justice Brandeis applied to a non-labor group in *Chicago Board of Trade v. U. S.*, 246 U. S. 231, at p. 238 (1918), is instructive in this regard:

"The case was rested upon the bald proposition, that a rule or agreement by which men occupying positions of strength in any branch of trade, fixed prices at which they would buy or sell during an im-

portant part of the business day, is an illegal restraint of trade under the Anti-Trust Law. But the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences. The District Court erred, therefore, in striking from the answer allegations concerning the history and purpose of the Call rule and in later excluding evidence on that subject."

Certainly the agreement in the instant case is not *per se* of such nature as to bespeak a direct intent and purpose to restrain interstate commerce. Nor is its necessary effect such as to directly and substantially restrain that commerce so that as said in the second *Coronado* case such intent must in reason be inferred. On the contrary it relates to conditions of manufacture and labor and if its intent and purpose was to carry out the union objectives of unionization and standardization of wages, the policy of the law recognizes that such serves not to impede the flow of interstate commerce, but in the long run to aid it by eliminating the stoppages occasioned by industrial strife flowing from the existence of different labor standards in an industry.

Aside from this the presumption of wrongful intent from the natural result of an act is not conclusive and may be rebutted by other evidence, and it is error to instruct otherwise.

Bentall v. U. S., 262 F. 744 (C. C. A. 8—1919);
Laws v. U. S., 66 F. (2d) 870 (C. C. A. 10—1933).

The intent with which defendants acted would not only be material, but a controlling factor, and was a question for the jury.

Lawlor v. Loewe, 187 Fed. 522, p. 527 (C. C. A. 2—1911);
Silverstein v. Local, 280, 284 Fed. 833 (C. C. A. 8—1923).

The ruling that the union ends and objectives were immaterial is therefore entirely unsupportable and contrary to law.

(A-4) The Court erred in instructing the jury, as follows:

"Some testimony has been heard here concerning the union label of the United Brotherhood of Carpenters and Joiners of America. In this connection, I charge you that whether the millwork and patterned lumber involved in the testimony in this case was manufactured in mills whose employees were members of the United Brotherhood of Carpenters and Joiners of America or of its affiliated unions, or whether such millwork and patterned lumber bore a union label is not to be considered by you. The sole question is whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants."

To which defendants excepted as follows:

"I also except * * * to that portion of the charge which in substance stated that the protection of the label or the use or non-uses of the label was not to be considered by the jury."

(Assignment 77, R. 1554.)

This throws into bold relief the entire tenor of the Court's charge. The jury was told that the *sole question* was whether defendants *intended to or did* restrain shipment of material in interstate commerce pursuant to an understanding between labor union defendants and non-labor defendants.

This irrevocably excluded from the jury all questions as to the purpose of the agreement claimed to illegally restrain interstate commerce, or whether the agreement was in settlement of a labor dispute. The Clayton and Norris-La Guardia Acts were thereby completely emasculated.

The opinion of the Circuit Court of Appeals under review, 144 F. 2d 546, 554, concludes that "There is abundant evidence convincing to us as well as the jury, that the unions did not confine their efforts to promoting their self-interest but combined with the employers, creating a monopoly excluding millwork from other states, for their employers' interest as well". No such issue was presented to the jury. On the contrary, the jury was charged that the "sole question" was whether the unions restrained interstate commerce "pursuant to an understanding" with non-labor defendants. That even though acting for their self-interest, since combined with employers, they were guilty. This irrefutably demonstrates fundamental error in the conduct of the trial. It is unthinkable that unions must stop short of gaining legitimate labor objectives because such may redound to the benefit of employers' interests as well. In such case the

"rightness" or "wrongness", "licit" or "illicit" of union activity claimed to constitute an illegal restraint clearly must be judged by the purpose, intent and objective. It has not been so judged here.

The door was completely shut to any consideration of how the agreement was reached, or the reasons or purposes behind it.

(A-5) The Court erred in instructing the jury, as follows:

"I have spoken of interstate commerce. As stated, it consists of the shipment of commodities or materials from one state to another. In this case the question is whether the labor union defendants entered into a combination with the non-labor defendants whereby the defendants intended to or did bring about an undue restriction of or interference with interstate commerce in millwork or patterned lumber. It is the nature of the restraint and its effect on interstate commerce, and not the amount of the commerce which are the tests of violation.

If a group of California lumber dealers should stop a truck coming from Oregon loaded with lumber because they did not want any Oregon lumber in California, and prevent its entry, that is an unreasonable interference with interstate commerce, although it involves only one truckload of lumber."

To which defendants excepted, as follows:

"I except further in connection with your Honor's description of the nature of the restraint and your statement, in effect, that the nature of the restraint and not the amount was the sole test of guilt."

(Assignment 54, R. 1533.)

While this instruction embodies to some extent abstract statements of principles from the cases, when coupled with the balance of the charge and without any definition or enlargement of the rules stated, or direction as to

their proper application to the facts, it is misleading and erroneous.

Reference is made to an undue "restriction" without any suggestion of what would be a reasonable or due restraint. The jury was told it was the nature of the restraint—with no indication of what nature of restraint would be lawful. The effect upon interstate commerce is prescribed as a test, without amplification to inform that the effect should be analyzed from the standpoint of market control of a commodity.

The amount of commerce was then excluded as a test with the example given of lumber dealers stopping one truck from Oregon because they didn't want any Oregon lumber in California as an unreasonable restraint. Apply this to the union petitioners against whom it was also given and we find the jury being charged that it would be an undue and illegal restraint for them to stop one truckload of lumber from Oregon because they didn't want any Oregon lumber in California, irrespective of the reason they didn't want such lumber, and notwithstanding that such reason was removed from any effort or design to effect the market, and the restraint actually without effect upon prices and free competition.

This flies directly in the face of the following language from the *Apex* case (*supra*), p. 506:

"It will be observed that in each of these cases where the Act was held applicable to labor unions, the activities affecting interstate commerce were directed at control of the market and were so widespread as substantially to affect it."

The instruction errs in two fundamentals. It misdirects as to tests to determine what is an undue restraint.

It fails to direct as to what would be a reasonable restraint. In fact neither it or any other instruction directly informed the jury of the existence of the rule of reason.

Apex v. Leader (supra);

Coronado case (supra);

Standard Oil v. U. S., 221 U. S. 1 (1911).

(A-6) The Court erred in instructing the jury as follows:

"You are to determine the guilt or innocence of a corporation by an examination of the acts done by its responsible officers or agents. The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation.

If you find that there did exist a combination and conspiracy such as is charged in the indictment, and that any defendant corporation participated therein, then I instruct you that such act of participating is deemed to be also the act of the individual director, officer or agent of such defendant corporation who authorized, ordered or did such act in whole or in part.

Likewise, the list of defendants includes a number of labor union organizations and several members thereof. It has been stipulated in this case that these labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that act, separately and apart from the guilt or innocence of their members.

You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents."

To which defendants excepted, as follows:

"We object, or, rather, we wish to except expressly to the charge that we determine the guilt or innocence

of the labor union defendants in the same way that you would the corporations with reference to the acts of their representatives and agents and with reference to the knowledge necessary to bind the union organizations, we take that exception" and "I also except to your Honor's charge with respect to the associations or corporations and your definition of them as being in substance separate entities, similar entities, and that they could be similarly found guilty upon the basis of acts of certain individuals associated with them."

I likewise except specifically to that portion of the charge in this connection dealing with the responsibility of unincorporated associations, particularly such as that involved here, for the acts of its agents."

The exception was well taken because such instruction was erroneous in that it applied a civil rule without fully defining it and charged the jury that the union organizations would be criminally responsible for the act of an agent done within the scope of his authority, or which he has assumed to do while performing duties actually delegated to him, without regard to the actual authority for the particular act or knowledge thereof and contrary to the provisions of the Norris-LaGuardia Act, 47 Stat. 71; 29 U.S.C.A. Sec. 106.

(Assignment 50, R. 1529.)

This instruction told the jury that the union organizations would be criminally responsible for the act of an agent done within the scope of his authority or which he had assumed to do while performing duties actually delegated to him. In other words—a representative of the union for collective bargaining could assume to make the union a party to an unlawful combination with employers to restrain trade without the authority or ratification of the union. Whether tested under the provisions of the Norris-LaGuardia Act, whose application to the case has been previously discussed, or under general principles of the law of agency in criminal cases, the instruction cannot be supported.

The Norris-LaGuardia Act required clear proof of actual authorization or ratification, after actual knowledge (Sec. 106).

The general rule is that criminal liability must be founded on authorized acts and such authority will not be presumed. A principal must knowingly and intentionally aid, advise, or encourage the criminal act to be responsible. The civil doctrine that a principal is bound by the acts of an agent within the scope of his agent's authority has no application in a criminal case.

U. S. v. Int. Fur Workers, 100 F. (2d) 541, 547 (C.C.A. 2—1938);

U. S. v. Food and Grocery Bureau of So. Cal. 43 F. Supp. 966, 971 (S. D. Cal.—1942);

People v. Doble, 203 Cal. 510 (1928);

2 Corp. Jur. p. 855, sec. 540.

(A-7) For the reasons stated in the instruction the Court erred in refusing to give instruction No. 55 requested by these defendants, as follows:

"You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act."

To which defendants excepted, as follows:

"I wish to take the following exceptions to the charge, if your Honor please. Referring to the proposed instructions of the union defendants, we wish to except to the Court's not giving Instructions Nos. 55, 56, 57 and 58 relating to the binding effect of representatives acts on the union defendant organizations, and with reference to the knowledge of the union

organizations of those acts. I assume that I should restrict myself to the numbers.

The Court. I think so. I think that will be sufficient."

(Assignment 51, R. 1532.)

This requested instruction was a fair statement of an applicable rule of law as established by the next preceding authorities cited, and petitioners were entitled to have it given. Instead, as we have seen, the Court applied the general civil rule of *respondet superior*.

(A-8) For the reasons stated in the instruction the Court erred in refusing to give instruction No. 56 requested by these defendants, as follows:

"You are instructed that no labor union or organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof."

The exception taken is quoted in Assignment No. 51, and by this reference is incorporated herein.

(Assignment 52, R. 1532.)

This request for the benefit of the labor organizations was based directly on the language of the Norris-LaGuardia Act (*supra*, Sec. 106). Either it or the equivalent should have been given, for under any possible view the questions of fact upon which would depend the application of the Act were for the jury. Also apart from the Norris-LaGuardia Act the requested instruction properly stated the criminal rule as to responsibility for acts of an agent.

(A-9) For the reasons stated in the instruction the Court erred in refusing to give instruction No. 56 requested by these defendants, as follows:

"You are instructed that no individual defendant who is an officer or member of one of the labor organizations involved can be found guilty in this case for an unlawful act, or acts, if any, of other officers, members or agents of such union organizations, except upon clear proof from the evidence that such individual defendant actually participated in or actually authorized such an act or ratified such unlawful act, if any, after actual knowledge thereof."

The exception taken is quoted in Assignment No. 51, and by this reference is incorporated herein.

(Assignment 53, R. 1533.)

This was similar to the requested instruction just discussed; proposed for the benefit of the individual labor defendants.

(A-10) For the reasons stated in the instruction, the Court erred in refusing to give instruction No. 69 requested by these defendants, as follows:

"You are instructed that as to every individual defendant affiliated with the labor unions you should return a verdict of acquittal unless you find that he was not acting in furtherance of the legitimate objects of his labor union, but on the contrary was acting in combination with the employer defendants with the intent to restrain interstate commerce in millwork and patterned lumber in order to eliminate competition and effect prices of such interstate commerce."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

(Assignment 84, R. 1558.)

The Court rejected in toto the proposed instructions of defendants, with possibly one minor exception relating to the presumption of a defendant's good character (R. 1149).

We readily concede that we were entitled to no particular verbiage, and that the Court was at full liberty to charge the jury in its own language. The proposed instructions which are the subject of assignments to be argued, are for the most part based upon legal theories inconsistent with the instructions given, or relate to matters upon which the charge was silent because, as reflected therein, they were deemed immaterial and improper considerations for the jury in reaching a verdict. An extended argument on each instruction, or even group of instructions, related to a general subject, would therefore in most instances be unduly repetitious of those already directed to the charge given by the Court.

It is uniformly held that the circumstances under which and the knowledge, motives, purposes and intent with which persons act are questions of fact for a jury, guided by proper instructions from the Court as to the law.

Holt v. U. S., 45 F. (2d) 392 (C.C.A. 7—1930);

Stone v. U. S., 113 F. (2d) 70 (C.C.A. 6—1940);

Odom v. U. S., 116 F. (2d) 996 (C.C.A. 5—1941);

People v. McGann, 194 Cal. 688 (1924);

23 *Corp. Jur. Sec.*, p. 616, sec. 1118; p. 621, sec. 1125; p. 622, sec. 1127.

It is equally well settled that where a correct proposition of law essential to the proper determination of issues, which are for the jury is proposed by defendants and not given in substance or effect, and the jury is not properly advised thereon by the general charge, the refusal is error.

Hersh v. U. S., 68 F. (2d) 799 (C.C.A. 9—1934).

The requested instruction which is the subject of this assignment is an example of the proposed instructions pertaining to what are legitimate objectives of labor and the effect of motive, intent and purpose in judging the conduct of petitioners.

Such instructions or their equivalent to cover the general subject matter should have been given unless motive, intent and purpose were immaterial. We have seen that the Court so ruled in instructing the jury that the fact these petitioners were acting in their own self-interest and to carry out their own legitimate objectives of labor could be no defense.

(A-11) For the reasons stated in the instruction, the Court erred in refusing to give instruction No. 100 requested by these defendants, as follows:

“You are instructed that by the indictment in this case it is charged that defendant unions were not attempting to enforce or protect the right to bargain collectively nor acting in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the alleged combination and conspiracy was alleged to be directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area, and you are instructed that the burden is upon the prosecution to establish to your satisfaction beyond a reasonable doubt and to a moral certainty that such charges are true, or you should acquit the union organizations and each individual union defendant.”

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

(Assignment 88, R. 1561.)

Because the specific facts alleged revealed otherwise when devoid of characterization, Par. 29 of the indictment contained the charge that petitioners were not acting in the course of a labor dispute or to enforce a legitimate objective of labor—but rather to prevent manufacturers from engaging in interstate commerce (R. 32). This had direct relation to appellants' intent. The burden of proving an unlawful intent was upon the prosecution and the instruction should have been given.

Minner v. U. S., 57 F. (2d) 506 (C.C.A. 10—1932);

Boatright v. U. S., 105 F. (2d) 737 (C.C.A. 8—1939).

(A-12) For the reasons stated in the instruction, the Court erred in refusing to give instruction No. 105 requested by these defendants, as follows:

"You are instructed that as to every individual defendant affiliated with the labor unions you should return a verdict of acquittal unless you find that he was not acting in furtherance of the legitimate objects of his labor union, but on the contrary was acting in combination with the employer defendants with the intent to restrain interstate commerce in millwork and patterned lumber."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

(Assignment 89, R. 1562.)

Clayton and Norris-LaGuardia Acts (*supra*).

(A-13) For the reasons stated in the instruction, the Court erred in refusing to give instruction No. 70 requested by the employer defendants, as follows:

"A labor dispute may be defined as a controversy concerning terms or conditions of employment.

A controversy by defendant manufacturers with defendant unions concerning whether defendant manufacturers should purchase millwork and patterned lumber manufactured under certain specified conditions would be a controversy concerning terms of employment, and therefore, a labor dispute."

The exception taken is quoted in Assignment No. 72, and by this reference is incorporated herein.

(Assignment 74, R. 1551.)

U. S. v. Hutcherson (supra).

(A-14) For the reasons stated in the instruction, the Court erred in refusing to give instruction No. 71 requested by the employer defendants, as follows:

"You are instructed that a contract concerning terms or conditions of employment between organizations of employers and organizations of employees, arising or growing out of a labor dispute, is not a violation of the Sherman Anti-Trust Act.

A provision in a contract, arising out of a labor dispute, requiring defendants to purchase only material that was produced under certain specified conditions would be ~~one concerning terms or conditions of employment.~~"

The exception taken is quoted in Assignment No. 72, and by this reference is incorporated herein.

(Assignment 75, R. 1552.)

U. S. v. Hutcherson (supra).

(A-15) For the reasons stated in the instruction, the Court erred in refusing to give instruction No. 79 requested by these defendants, as follows:

"You are instructed that if the agreement of September 21, 1936 between the union defendants and employers was made after or as a result of a controversy or dispute as to wages and conditions of employment and the union defendants demanded or wanted the provision thereof that no material should be purchased or work done thereon which had been manufactured or distributed under rates of wage and working conditions not conforming to such agreement, in order to establish a uniform condition of labor conditions, unionize other mills in the industry, gain jobs or better wages, or for any other legitimate purpose of a labor organization, you should acquit the union defendants for then neither the making of said agreement, nor any renewal thereof, nor the carrying out of such an agreement by the means charged in the indictment, is unlawful on the part of the union defendants."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

(Assignment 70, R. 1549.)

Clayton and Norris-LaGuardia Acts (*supra*);
Apex Hosiery v. Leader (*supra*);
U. S. v. Hutcheson (*supra*).

(A-16) For the reasons stated in the instruction, the Court erred in refusing to give instruction No. 62 requested by the employer defendants, as follows:

"You are instructed that the public policy of the United States guarantees full freedom to labor to organize for the purpose of negotiating the terms and conditions of employment and in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

It is the public policy of the United States to encourage industrial peace by the execution of collective bargaining agreements between labor and employer.

You are instructed, therefore, to draw no inference of guilt or wrongdoing merely because of the execution between defendants of an agreement respecting wages, hours and working conditions."

(Assignment 112, R. 1574.)

Norris-LaGuardia Act (*supra*).

(A-17) For the reasons stated in the instruction, the Court erred in refusing to give instruction No. 65 requested by these defendants, as follows:

"You are instructed that the Sherman Act is not aimed at the policing of interstate transportation or movement of goods. You are instructed that a labor union has a constitutional right to picket any railroad car or other container of products which is considered unfair to union labor because of the conditions of employment under which such products have been produced in order to advertise to the world that such goods are unfair. You are further charged that any person may lawfully decline to work upon or handle such products considered unfair to the labor organization with which he is affiliated and none of such acts is unlawful under the Sherman Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

(Assignment 81, R. 1556.)

The prosecution charged and produced evidence to show picketing on the part of the unions on the theory that such were overt acts under the alleged conspiracy. The Court declined to give the foregoing instruction and others such as the one which is the subject of the next assignment. These were framed to advise the jury as to

lawfulness of proper picketing and other conventional means of carrying out labor's own objectives. Again we revert to the obvious proposition that it was for the jury to determine whether the activities testified about were overt acts under an unlawful conspiracy or normal labor union conduct to advertise its own grievances and carry out its fight against unfair material.

This group of requested instructions was unquestionably sound in law, pertinent to the evidence and important to the considerations of the jury.

Apeex Hosiery v. Leader (supra);

Thornhill v. Alabama (supra);

Clayton and Norris-LaGuardia Acts (supra).

(A-18) For the reasons stated in the instruction, the Court erred in refusing to give instruction No. 97 requested by these defendants, as follows:

"You are instructed that the union defendants have the right to decline to work or agree not to work upon products made by a CIO or a company union in carrying out their own labor objectives."

The exception is quoted in Assignment No. 57, and by this reference is incorporated herein.

(Assignment 97, R. 1566.)

B. Evidentiary Rulings

(B-1) The Court erred in excluding the testimony of defendants' witness, Emil H. Ovenberg, as follows:

"Q. Now, with reference to all of your activities as a negotiator, or as a representative of your organization, or as an individual, were you acting with the intent to promote the interests of yourself and your organization?"

A. Sincerely and honestly—

Mr. Burdell. I object to that and ask that the answer go out.

The Court. Yes, it may go out.

Mr. Burdell. I object to it as calling for the opinion and conclusion of the witness, and immaterial, irrelevant to any issue in this case.

The Court. Sustained.

Mr. Howard. If I may call to your Honor's attention, I believe that the question of intent is vital here, and exceedingly material. Your Honor will bear in mind paragraph 29 of the indictment, which has a direct bearing on this issue, in which the charge is made that these men were not intending to promote their own interest, or with an intent of promoting the objective of labor. I have cases here, your Honor.

The Court. I have cases here, too. The ruling will stand.

Mr. Howard. May I, in order that there be no question about the form of the question, then, make this offer of proof, that we offer to prove by this witness, who is a union negotiator or representative of the union in connection with the negotiation of the disputes with employers in the period of 1936 and again in 1938, that he intended only to act in promotion of his union demands and objectives. I wish to make that as an offer of proof.

The Court. Any objection?

Mr. Burdell. Yes, we object to that as having no probative value at all, any question of intent is immaterial to this case, and further the intent which is included in this offer is not consistent with any such intent as may be necessary to sustain the allegations of the indictment.

The Court. Objection sustained.

Mr. Faulkner. Your Honor is not ruling intent and motive does not enter into a conspiracy charge?

The Court. Absolutely, that is what I am ruling, in a conspiracy charge.

Mr. Faulkner. That intent does not enter into it?

The Court. The intent is immaterial here at this time. That is what I am ruling.

Mr. Faulkner. Very well."

(Assignment 30, R. 1483.)

Since this is the first evidentiary ruling to be argued we make the general observation that the District Court in such rulings went to the full extreme and even beyond the limits of the theories expounded in the instructions already considered.

It is established by practically uniform authority that where the motive, intent or reasons which actuate an individual are material, that individual is competent to testify directly as to the motive and intent with which he acted.

Crawford v. U. S., 212 U.S. 183 (1909);

10 *R. C. L.* p. 946, sec. 116;

8 *R. C. L.* p. 181, sec. 174.

We have already argued the materiality of motive and intent and will not repeat. In passing we do wish to point out that besides the charge that the unions were not acting in their own self-interest for union objectives, to which the evidence would clearly be relevant, we find in the instruction of the Court which is the subject of assignment No. 54, (R. 54, 55), the jury was told that if defendants *intended* to or did bring about an undue restraint they would be guilty. Yet direct evidence as to actual intent was denied petitioners. The Court consistently so ruled as indicated by assignments of error affecting the testimony of other defendants which will not separately be argued (R. 1497, 1498, 1525).

(B-2) The Court erred in excluding the testimony on cross examination of plaintiff's witness, Willard B. Jefferson, as follows:

"Mr. Routzohn. Q. Was this non-union lumber that you purchased at that time?"

Mr. Clark. I object on the same grounds (immaterial, irrelevat and incompetent).

A. As far as I know, it was.

The Court. Sustained."

(Assignment 14, R. 1457.)

The witness had testified he was told by a representative of the unions he would not deliver certain material purchased from a firm in Missouri to jobs in San Francisco unless it had the local union stamp on it (R. 367, 368). This purported to be proof of an overt act done pursuant to the alleged agreement and conspiracy. The excluded testimony had direct bearing upon the question of whether the activity described in the direct testimony had any relation to a contract between employers and employees. Regardless of the working conditions under which produced, if it was non-union material it would be rejected by the unions as unfair for that reason alone. On the other hand, if the jury concluded that the evidence did reveal conduct related to the restrictive clause of the employer-employee contract, the fact that it was non-union material would have substantial probative force upon the meaning, purpose and effect of those provisions.

(B-3) The Court erred in excluding the testimony of defendants' witness, Walter C. O'Leary, as follows:

"Q. Do you know whether the Aladdin Company was union or non-union?"

Mr. Zirpoli. We object to that.

The Court. Sustained."

(Assignment 39, R. 1499.)

Testimony about the Aladdin Company involved the petitioner Charles Roe. The evidence as to that defendant showed that he was not a member of a millworkers union and had neither negotiated nor signed any of the contracts in the case. He had cited the Aladdin Company representative in connection with the unfair or we do not patronize list—and it was important to show that such was a non-union firm—particularly from the standpoint of the motives which would prompt the defendant Roe and bear on whether his action was a part of that claimed to be referable to an agreement with employers and in furtherance of the alleged conspiracy. Under any conception of the law the testimony was material.

(B-4) The Court erred in excluding the testimony of defendants' witness, Kenneth Davis, concerning the affiliation of certain firms in the Northwest with defendant, United Brotherhood of Carpenters and Joiners of America and their right to use its label and in sustaining the objection to defendants' offer of proof through such witness, as follows:

"Q. I call your attention, Mr. Davis, to the 'McClary Timber Company which has been previously testified about in this case, the testimony appears in transcript No. 4 at page 320, and ask you if you know whether or not during the period from 1936 to 1940 that company was organized by the United Brotherhood of Carpenters and had the right to use the label of the United Brotherhood of Carpenters on its woodwork and material?

Mr. Zirpoli: I object. This is immaterial and irrelevant and not within the issues of the case.

The Court: Sustained.

Mr. Carson, II. I would like to make an offer of proof in this connection.

The Court: Yes.

Mr. Carson, H. The testimony of this witness will show that the McCleary Timber Company, the Weyerhaeuser Lumber Company, the Long-Bell Lumber Company, the Central Door and Lumber Company of Portland, Oregon, the Central Door and Plywood Company of Albany, the G. D. Johnson Company, the Robinson Manufacturing Company at Everett, Washington, the Ewauna Box Company at Klamath Falls and the Algoma Lumber Company at Algoma, Oregon, from the period 1936 to the period of 1940 were not organized by the United Brotherhood of Carpenters, were not working under a contract with any local union or affiliated organization of the United Brotherhood of Carpenters, did not possess the right to use the union label, and none of their products with the exception of the doors of the Central Door and Lumber Company possessed the union label.

Mr. Zirpoli. I make the same objection, your Honor; it is immaterial and irrelevant and not within the issues of this case.

Mr. Rontzohn. Your Honor please, I am not certain that the full import of this testimony is being considered at this time.

The Court. I understand it fully. If you wish to add anything to the offer that has been made by Mr. Carson, you may.

Mr. Rontzohn. Merely a statement as to purpose, your Honor.

The Court. I don't care to hear anything further. I think Mr. Carson has made it quite clear. The objection will be sustained."

(Assignment 40, R. 1499.)

This assignment demonstrates how unequivocal and complete was the ruling of the Court that it was of no relevancy that the alleged overt acts of the unions sought to be attributed to an agreement between employers and employees were directed to non-union material. The basis for such a ruling is difficult to understand. Accepting for the sake of the argument the Court's theory that motive, purpose and reason were all immaterial and

that the mere existence of an agreement between employers and employees, the effect of which was to restrain interstate commerce violated the statute, still the materiality of the evidence clearly appears. Activity related to the material of the firms involved was permitted to be shown and would bear on the issue of whether the agreements did affect interstate commerce. The Court's instructions concede what is undeniably the law that in the absence of such an agreement, union activity directed to non-union materials would be legal. Yet this evidence was rejected which would show union activity which would be carried on independent of any agreement with employers—and thus affect directly the question of whether the acts had any relation to the employer agreement.

This in effect rejected the sole defense which the instructions left to the appellants, i.e., whether the agreements included material from other States.

(B-5) The Court erred in excluding the testimony on cross-examination of plaintiff's witness, Emory J. Nutting, as follows:

"It was the purpose of these negotiations to attempt to arrive at some agreement. I would say my best recollection as to the period of time covered by the negotiations was 3 months.

Q. Three months. During all of that time, Mr. Nutting, there was a dispute on, was there not, between the unions on the one hand and the mill owners on the other as to the rate of wages?

Mr. Burdell. Just a moment. That calls for a conclusion of the witness and is improper cross-examination and immaterial.

The Court. Sustained.

Mr. Rontzohn. Q. Was there any other dispute on at that time?

Mr. Burdell. Same objection.

The Court. Sustained.

Mr. Rontzohn. I haven't asked my question yet.

The Court: Well, the question is objectionable so far as it has gone, 'Was there any other dispute.'

Mr. Rontzohn: Q. What were these negotiations that lasted three months?

Mr. Burdell: Objected to.

The Court: It is quite clear the negotiations related to wages and with reference to an agreement and it was signed. Isn't that quite plain? Why take up time cross-examining on that subject?

Mr. Rontzohn: If your Honor thinks I am taking too much time, I will desist.

The Court: Well, I think it is quite clear what you are trying to show by this witness.

Mr. Rontzohn: Yes. Your Honor in the very beginning told us we would have to establish that there was a labor dispute. That is exactly what I am trying to show.

The Court: You have asked him if there was a labor dispute, which you have no right to do.

Mr. Rontzohn: The witnesses have been asked for many a conclusion at this trial, I have noticed.

The Court: That may be so."

(Assignment 15, R 1457.)

It is to be seen from this ruling that the Court not only instructed that the existence of a labor dispute would be no defense, but also excluded cross-examination to show that activities concerning which the prosecution produced evidence resulted from a labor dispute.

(B-6) The Court erred in excluding the testimony of defendants' witness Kenneth Davis and defendants' offer of proof through such witness thereby rejecting evidence to show the organization efforts of the United Brotherhood of Carpenters and Joiners of America in the Northwest during the period 1936 to 1940, and the counter efforts of the C.I.O. and the industrial war that arose therefrom, and that activities of the appellants in the Bay Counties area

were allied to and a part of the organization efforts of the United Brotherhood of Carpenters in the Northwest and the efforts to stop the inroads of the C.I.O.

(Assignment in full being No. 41 is quoted in Appendix, p. 80.)

It can no longer be doubted that acts resulting from conflicts involving rival unions are as much within the immunity of the Clayton and Norris-LaGuardia Acts as activities arising directly from a struggle between employer and employee.

U. S. v. Hutcheson (supra).

This evidence was therefore patently proper unless the mere existence of an agreement with the employers made immaterial the ends which prompted the unions to make such agreement, and eliminated all questions concerning the motive and intent with which, and the circumstances under which appellants acted. The exclusion of this testimony is a glaring example of the Court's basic ruling that the existence of a labor dispute was immaterial. This again eliminated the Norris-LaGuardia Act from the case as a matter of law.

(B-7) The Court erred in refusing to admit in evidence Defendants' Exhibit 2-M for Identification, which was a circular letter from the General Executive Board of United Brotherhood of Carpenters and Joiners of America to officers and members of all local unions and district councils to the effect that a sub-committee acting on instructions of the General Convention held in December, 1936, had visited the Northwest to find communistic and adverse influences working to destroy the activities of the United Brotherhood, and that before a report could be made a C.I.O. charter to a dual organization had been issued;

that members must not handle products of an employer of C.I.O. labor and that the watchword should be "no C.I.O. lumber or millwork in your district".

(Assignment in full being No. 42 is quoted in Appendix, p. 83.)

This offered evidence had a direct bearing on the motives, intent and purposes actuating petitioners. It showed that the union defendants were acting to aid themselves and promote their organization efforts in the industry involved in a collateral labor dispute with a rival labor organization. If such is material, then it was error to reject the evidence, for it is established that just as direct evidence of intent is admissible, so is any other fact or circumstance which throws light on the intent with which a person acts.

Miller v. U. S., 120 F. (2d) 968 (C.C.A. 10—1941);
People v. Becker, 137 Cal. App. 349 (1934).

(B-8) The Court erred in excluding the testimony on cross examination of plaintiff's witness, E. W. Yates, as follows:

"That material we bought from mills at Portland, the Jones Lumber Company, and a little Company at The Dalles, Oregon.

Q. Did you know at that time and do you know now whether or not some of those companies were organized under the C.I.O.?

Mr. Zirpoli. I object. I have not interposed this objection, but it seems to me it is irrelevant and immaterial.

The Court. I do not think it makes any difference whether it was the C.I.O. or A.F.L. Sustained.

Mr. Rutzohn. Our point is, of course, if it did not bear the union stamp of the Carpenter Brother-

hood of the A.F.L. that we had a perfect right to keep it out.

The Court: Objection sustained."

(Assignment 13, R. 1456.)

Just as it was material to prove a product was non-union, it was likewise highly important to show it C.I.O. In both instances it was relevant to show that any discrimination was not because it was out of the state material—or material from competitors of the employer—but because it was unfair material.

(B-9) The Court erred in excluding the testimony on cross-examination of plaintiff's witness, John Carrick, as follows:

"I discovered from experience 'hot cargo' or 'hot lumber' is something I could not buy. It meant something you can't bring in.

Q. You couldn't bring it in because there was a dispute on, a war on labor between the C.I.O. and the Carpenters' Brotherhood, which was an A. F. of L. organization? Didn't you understand that?

Mr. Zirpoli: I object to that as irrelevant, and immaterial. There is no issue involved in such a war.

The Court: Sustained.

Mr. Routzohn: That is all."

(Assignment 12, R. 1456.)

This ruling prevented eliciting from the witness not only that it was C.I.O. lumber which he was prevented from buying and was classified as "hot"—but that there was an actual labor dispute being waged between the C.I.O. and the Carpenters' Brotherhood at the time.

(B-10) The Court erred in excluding the testimony of defendants' witness, David H. Ryan, as follows:

"Mr. Routzohn: Q. Now, Mr. Ryan, from 1935 on, 1936, 1937, 1938, 1939, 1940 and 1941 up to the present time, have you had a continuous labor dispute with the C.I.O. in your organization?

Mr. Clark. We object, first, as immaterial; second, as calling for the opinion and conclusion of the witness.

The Court. The objection is sustained.

Mr. Routzohn. I want to prove there has been a labor dispute here, not only with these men, but with a dual organization.

The Court. The objection is sustained."

(Assignment 36, R. 1497.)

This rejected a showing through one of the defendants who negotiated the agreements challenged by the prosecution, that during the period covered by the indictment a labor dispute existed between his organization and the C.I.O. Such would bear directly on the motives and objectives with which these petitioners acted.

(B-11) The Court erred in excluding the testimony on cross-examination of plaintiff's witness, H. P. Smith, as follows:

"I am employed by Unit-Bilt Company, one of the defendants in this case. Mr. Roselyn is the head of that company and handled the Grand Rapids line under a license. His directions to me are to press Grand Rapids equipment in the sales.

Q. And in connection with those sales, you are unable to compete against local commercial fixture competition in this district; isn't that true?

Mr. Clark. I object to that as incompetent, irrelevant and immaterial.

The Court. Sustained.

Mr. Faulkner. Q. In connection with the work that you do for the Unit-Bilt people you bid, do you not, upon Grand Rapids articles?

A. We have to quote prices.

Q. You also quote prices on the same jobs for the Unit-Bilt people, don't you?

A. That is true.

Q. Which is the lower?

Mr. Clark. Your Honor, we object to that—

Mr. Court. I don't see the materiality of it. Objection sustained.

Mr. Faulkner. Well, we offer to prove, your Honor, that the prices of the Unit-Bilt fixtures are constantly lower.

Mr. Clark. Just a moment. I object to Mr. Faulkner stating what he offers to prove in the presence of the jury.

The Court. You may proceed.

Mr. Faulkner. We offer to prove by this testimony that the prices of the Unit-Bilt Company to the same customers where their prices are quoted and the Grand Rapids' are quoted, that the Unit-Bilt prices are constantly lower even when their instruction is to sell Grand Rapids goods.

The Court. Let the ruling stand."

(Assignment 20, R. 1469.)

The indictment, Paragraph VII, charges that the effect of the conspiracy was to increase prices (R. 33) and evidence of higher prices for locally manufactured material in the San Francisco Bay area was introduced (direct examination Edward A. Allen, R. 381, 382). The witness being cross-examined had just testified on direct that Grand Rapids had gotten no more jobs of importance in the Bay area although he had represented them as salesmen until going with defendant, Unit-Bilt Store Equipment Company who became licensee of Grand Rapids (R. 519). It is obvious the rejected cross-examination was proper to show both the reason Grand Rapids didn't get jobs in this area and that the local prices were competi-

tive and not higher. These things go directly to fundamentals in the case. The theory of the prosecution was that petitioners had restrained interstate trade with the effect of stifling competition and increasing prices. It was certainly relevant to show that the business decline of such an outside firm was because of inability to meet competitive prices of local firms. The evidence sought would be direct proof of such fact.

(B-12). The Court erred in excluding the testimony of defendants' witness, David H. Ryan, as follows:

"I pointed out to Mr. Williams that Walter Jacoby was there doing some work, and he said he was going to install Grand Rapids Fixtures, and we did not like Walter Jacoby, who had a habit of getting laborers and give them a pair of overalls and some tools and get him on the job and do the work of a carpenter.

Mr. Clark: I object to that.

Mr. Rontzohn: I think that is very important.

The Court: I don't think it is.

Mr. Rontzohn: I suppose I should show, if your Honor please, that Mr. Jacoby had not been employing union labor.

The Court: It is unimportant whether he did or not. I do not see that it has anything to do with the issues here, at all.

Mr. Rontzohn: I would like to make that proffer, that Mr. Jacoby was not—

The Court: If you wish to ask the question, you can.

Mr. Rontzohn: Q. Was it your objection that Mr. Jacoby, who was there for the Walter Manufacturing Company, did not comply with the labor conditions that were set forth in your contract?

Mr. Clark: I object to that on the ground it is immaterial, irrelevant, and incompetent, and also leading.

The Court: Sustained.

Mr. Rontzohn: Tell us what you said relative to Mr. Jacoby?

As I told Mr. Williams that there were non-union men working in the basement of Roos Bros.—

Mr. Clark: We move to strike that out as irrelevant.

The Court: It seems to me it is immaterial here. I think you are going very far afield. It may go out."

(Assignment 31, R. 1485.)

The theory in classifying this testimony as immaterial and far afield is difficult to comprehend. The Government witness Williams had testified to this very conversation about which the defendant Ryan was sought to be interrogated (R. 468). The Government's evidence on this subject was designed to show a discrimination and restraint against the material of Grand Rapids Fixtures. The obvious purport of the rejected testimony was to show that defendant Ryan wasn't objecting to installation because they were the fixtures of an outside firm, but because of the local labor conditions under which they were being installed by non-union labor. It was a directly pertinent portion of the very conversation concerning which the Government witness had testified, and if there was any connection it would always affect the veracity of the version of the conversation given by the prosecution witness.

The law is clear that the evidence was admissible.

10 R. C. L. p. 935, sec. 101.

(B-13) The Court erred in excluding the testimony of defendants' witness, Emil H. Ovenberg, as follows:

Q. Now, the 1936 agreement, then, resulted in an increase in the wage scale, did it not, to the employees? A. It did, yes.

Q. What was the movement of living conditions at the same time?

Mr. Howland: I object to that, if your Honor please, on the ground it is irrelevant and immaterial, and having nothing to do with the issues in this case.

The Court: Sustained.

Mr. Howard: If your Honor please, if I may have the privilege of this suggestion relative to the indictment, there is a charge here that there was some question of gift in the making of the scale. I think that we are entitled to all of the facts bearing on the question of how that scale was fixed."

(Assignment 26, R. 1481.)

This was a material circumstance bearing on the fixing of the wage scale and to show that the unions were not undertaking to impede competition from outside material in exchange for a wage increase. It bore directly on the reasons which did impel the unions to act.

(B-14) The Court erred in holding immaterial the fact that the unions obtained separate agreements upon the same terms from many cabinet shops not members of the employer association and in rejecting an offer to show that some forty other firms had 1938 contracts.

(Assignment No. 25 which is quoted in full, Appendix p. 88.)

This evidence was proper for at least two reasons. It was corroborative of the unions' position that their primary object in obtaining the so-called restrictive clauses of the agreement was the unionization of other shops in this locality and to meet a local situation.

It is also to be remembered that the indictment charged that the commercial fixture group, being the indicted cabinet manufacturers, did more than ninety per cent of the construction of cabinets and store fronts in the San Francisco Bay Area.

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CONCLUSION

The circumstances under which the agreement was made, and the purpose and objectives of the Unions immunized their activity under the Clayton and Norris-LaGuardia Acts. Apart from such statutes their conduct also meets the test under the rule of reason. It therefore appears as a matter of law that these petitioners did not violate the Sherman Law.

The trial rulings and consequent convictions which inevitably followed can be upheld only if it is to be ruled that the agreements not to handle millwork and patterned lumber manufactured under less favorable working conditions were illegal *per se* if their enforcement included material in interstate commerce. This would read the Clayton and Norris-LaGuardia Acts out of the law. If these statutes have any application then whether the agreement resulted from a labor dispute, and the purposes, ends and objectives of the petitioners were at least questions of fact for the jury to be determined under proper instructions upon the law.

Respectfully submitted,

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APPENDIX

Sherman Act—Sec. 1: Trusts, etc., in restraint of trade illegal; penalty.—Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. * * *

(July 2, 1890, 26 Stat. 209, 15 U.S.C. Sec. 1.)

Clayton Act—Sec. 6: Antitrust laws not applicable to labor organizations.—The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

(Oct. 15, 1914, 38 Stat. 731, 15 U.S.C. Sec. 17.)

Clayton Act—Sec. 29: No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party

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making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; or shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

(Oct. 15, 1914, 38 Stat. 738, 29 U.S.C. 52.)

Norris-LaGuardia Act—Sec. 102: Public policy of the United States. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

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Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

Sec. 104: Grounds for injunction limited. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

- (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
- • •
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(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

Sec. 105: Same; combinations or conspiracies. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the Acts enumerated in section 4 of this Act.

Sec. 106: Member of union when not liable for acts of others. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of such acts, or ratification of such acts after actual knowledge thereof.

Sec. 113: What constitutes labor dispute; participants; courts included. When used in this Act, and for the purposes of this Act:

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(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employees or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute," (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

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(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

(Mar. 23, 1932, 47 Stat. 70, 29 U.S.C. Sec. 102 to 113.)

Assignment No. 41 (R. 1501)

The Court erred in excluding the testimony of defendants' witness, Kenneth Davis, concerning the organization of the lumber and sawmills in the States of Washington and Oregon by the A.F. of L. and C.I.O. during the years 1936 to 1940, inclusive, and in sustaining the objection to defendants' offer of proof through such witness, as follows:

"Mr. Carson, II. Q. Mr. Davis, are you acquainted with the facts concerning the organization of the lumber and sawmills located in Oregon and Washington during the year of 1933?

A. I am.

Mr. Zirpoli. I make the same objection, your Honor; immaterial and irrelevant.

The Court. Yes. The answer may go out. The objection is sustained.

Mr. Carson, II. Q. Are you acquainted with the facts surrounding the organization of the lumber and saw mills in Washington and Oregon in the year 1934?

A. I am.

Mr. Zirpoli. Same objection.

The Court. The answer will go out.

Mr. Zirpoli. Immaterial and irrelevant.

The Court. The objection is sustained.

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Please don't answer until I have an opportunity, witness, to hear the objection, and an opportunity ~~by~~ rule.

Mr. Carson, II. Without repeating the question, but the same facts as to 1935, 1936, 1937, 1938, 1939 and 1940.

Mr. Zirpoli. I interpose the same objection, your Honor.

The Court. Sustained.

Mr. Carson, II. May it please the Court, we offer this testimony and this witness' testimony will show, in the year 1933 the mills in the Northwest, the lumber and saw mills in the States of Washington and Oregon were independent organizations and did not affiliate with either the AF of L or the CIO; that their wages at that time were from 19 to 28 cents per hour; that in the year 1934 those organizations under the NRA affiliated with the AF of L and received Federal charters, at which time their wages were advanced to the minimum wage of 40 cents per hour; that in the year 1935 they became affiliated with the United Brotherhood of Carpenters and received non-beneficial charters, at which time their minimum wages were increased to 50 cents per hour; that during the year 1940 they asked for recognition in the United Brotherhood of Carpenters under the classification of semi-beneficial locals; upon the recommendation of the president, general president Hutcheson, they were accepted into the organization and their charters were issued on a semi-beneficial class with the semi-beneficial benefits as set out in the constitution of the United Brotherhood of Carpenters and Joiners which is in evidence in this case; that in the year 1935 when they first affiliated with the United Brotherhood of Carpenters, they had approximately 1,900 members,

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and by 1937 their membership had increased to 35,000 members; that in the year 1937 certain industrial warfare occurred in the States of Washington and Oregon, resulting in splitting up that union by the CIO in that territory, which left approximately 20,000 members in the United Brotherhood of Carpenters and approximately 15,000 went over to the CIO; that in the year 1940 these organizations were all back into the United Brotherhood of Carpenters and had increased their membership to 50,000; that the testimony of this witness will establish that the organization's efforts, that the contracts and efforts on the part of the locals and the District Council in the Bay Counties area was directly allied and a part of the organization's efforts of the United Brotherhood of Carpenters in the Northwest and is interallied with that organization and with the efforts to stop the inroads of the CIO.

Mr. Zirpoli: All of which testimony, I submit, is immaterial and irrelevant.

The Court. Do you wish to add anything?

Mr. Routzohn. I think it is quite material, your Honor, for us to show—

The Court: Please, Judge; I don't wish to hear any argument. The objection is sustained.

Mr. Routzohn. All right, sir.

The Court. I am sorry, but I don't wish to hear any argument."

*Appendix***Assignment No. 42 (R. 1504)**

The Court erred in sustaining plaintiff's objection and refusing to admit in evidence circular letter, Defendants' Exhibit 2-M for identification, and in sustaining objection to and striking out the testimony of the witness, Joseph F. Cambiano, as a foundation for admission of such exhibit, as follows:

"I attended the twenty-third General Convention of the United Brotherhood held in Lakeland, Florida, in December, 1935.

Q. I will ask you whether or not at that time any action was taken relative to the CIO activities in this territory in interfering with the United Brotherhood unions and endeavoring to organize the planing mills in this district.

Mr. Clark. Your Honor, we will object to any activities of the CIO, being outside any issue in this case.

The Court. Sustained.

Thereupon the jury was excused for the purpose of proffering certain documents in evidence.

The following proceedings occurred:

The Court. My suggestion is, you may make your offer, Judge Rontzohn. I have read the document and I think I remember what it contains. You may make your offer for the record, and I will rule.

Mr. Rontzohn. I desire, however, your Honor please, to lay the foundation for the introduction of the letter, unless there can be a stipulation at this time.

The Court. Well, you may do that if you wish.

Mr. Rontzohn. Q. Mr. Cambiano, I hand you what purports to be a circular letter of date August 11, 1937, entitled Special Circular from General Exec-

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tive Board sent by the General Executive Board of the United Brotherhood of Carpenters and Joiners of America, William L. Hutcheson, Chairman, and Frank Duffy, Secretary, and ask you state to the Court just what that paper is.

A. A circular sent out by the United Brotherhood of Carpenters—

Mr. Rontzohr: No, no. It is a circular letter?

A. A letter to local unions throughout the United States and Canada.

Q. By 'Local unions' you refer to local unions, of course, of the United Brotherhood?

A. Local unions; district councils, State Councils and what not.

Q. You said you were at the convention at the time it was taken up?

A. That's right.

Q. At that time was there a dual organization known as the CIO, or Committee of Industrial Organizations, that was making any organization efforts and inroads on the locals?

A. There was.

Q. Of the United Brotherhood of Carpenters and Joiners of America?

A. There was.

Q. Was that true in this district as well as other districts throughout the Pacific Coast?

A. Yes.

Q. Including Washington and Oregon?

A. Yes.

Q. From 1936 on, has there been a constant and continuous organizing effort opposed to the organization efforts of the Brotherhood, presented by the CIO organization?

A. There has been.

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Mr. Clark. Your Honor, we will object and ask the answer go out.

The Court. The answer may go out. What is the objection?

Mr. Clark. Objected to as irrelevant and immaterial to any issue in this case.

The Court. Sustained.

Mr. Clark. I move to strike out the other answers. I thought he was laying a foundation to introduce this circular.

The Court. I thought so, too.

Mr. Clark. We move to strike it out.

Mr. Rortzohn. That was my purpose. I was trying to make it doubly sure we were getting the proper foundation.

At this time, your Honor please, we wish to introduce into evidence—let us have that marked for identification—introduce in evidence this circular letter which has been marked for identification Defendants' Exhibit 2-M.

Mr. Clark. We object, your Honor, on the ground, first, that it doesn't meet the case in chief; second, that it is self-serving; and, third, it is immaterial, and irrelevant to any issue involved in this case.

The Court. Objection sustained.

The circular letter was marked 'Defendants' Exhibit 2-M for Identification'.

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The full substance of the evidence rejected is as follows:

“United Brotherhood of Carpenters and
Joiners of America

August 11, 1937.

Special Circular Form General Executive Board

To the Officers and Members of All Local Unions and
District, State and Provincial Councils of the
United Brotherhood of Carpenters and Joiners of
America.

Greetings:

Acting on instructions of our 23rd General Convention held in Lakeland, Florida, December, 1936, a subcommittee of the General Executive Board visited the lumber and saw mill operations in the Northwest. While there, meetings were held with representatives of our District Councils of the Western States, as well as operators who employ our members. The committee endeavored to get first hand information as to the past manner of handling organization of this branch of our industry, so as to secure the best possible results for men working in the woodworking industry as to working conditions and the proper relationship of men in our organization.

It found communistic and adverse influences working from within to destroy the activities of the United Brotherhood and building up of a dual International Union of Woodworkers, opposed to the United Brotherhood, but before the sub-committee reported

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its findings and recommendations to the General Executive Board the C.I.O. had already issued a charter, or certificate of affiliation to a dual organization called 'International Woodworkers of America.'

This dual organization is already trying to induce our local unions and members to secede from the United Brotherhood and to combat this dual movement it is necessary to notify all local unions, district, state and provincial councils that our members must not handle any lumber or millwork manufactured by any operator who employs C.I.O. or those who hold membership in an organization dual to our Brotherhood.

Do not be misled by newspaper articles that the entire lumber and sawmill industry has gone C.I.O. Just the opposite is the truth. We have thousands and thousands of loyal members in the Northwest who are battling for the United Brotherhood and will continue to do so, and it makes it absolutely necessary for all members to give them their support by refusing to handle materials coming from C.I.O. operations.

The C.I.O. has challenged us, and we must meet that challenge without hesitation. Therefore, you are instructed to appoint a committee to inform your employees and the lumber dealers that our members will refuse to handle any dual or C.I.O. products.

A list of operations using this class of labor will be sent from time to time as the situation develops, but appoint a committee at once so employers will be informed in plenty of time to protect themselves before placing orders for lumber or millwork. Kindly comply with the instruction at once and inform the General President of the names and addresses of the committee so proper information can be sent direct to them as well as to you, to secure quick action.

Appendix

Let your watchword be 'No C.I.O. lumber or mill-work in your district', and let them know you mean it.

Fraternally yours,

General Executive Board

William L. Hutcheson

Chairman.

Frank Duffy

Secretary."

Assignment No. 25 (R. 1474)

The Court erred in excluding the testimony of defendants' witness, W. P. Kelly, as follows:

"We obtained separate agreements from many of the cabinet shops who were not represented by Mr. Ennes.

Q. Yes. Have you those contracts?

A. I have no doubt that they are on file in the local unions; or in the district council.

Mr. Carson, II. They have been brought in for identification but they have not been separated.

The Court. Well, I think it is immaterial, anyhow; you are wasting time in producing them, gentlemen. If you wish to make a formal offer of them I will make a ruling now.

Mr. Routzohn. Q. Can you tell us about how many there were that you obtained, contracts from people other than those represented by Mr. Ennes?

Mr. Burdell. I object as immaterial and no foundation, and calls for his conclusions.

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The Court. I think he said no.

The Witness. No, I did not say anything.

The Court. The objection is sustained.

Mr. Rontzohn. We would like at this time, if your Honor please, to make a proffer of all the contracts that we brought in here at the instance of the Government.

The Court. Well, produce them; find them and produce them.

Mr. Rontzohn. If I can prevail on the clerk, here, to do that, your Honor, please.

The Court. Well, I think you ought to assist the clerk in doing that if you know what they are. Make the offer some other time.

Mr. Rontzohn. All right, sir. We can do that before this witness leaves.

Q. Is that also true in the 1936 contract, that you obtained contracts from others than those represented by Mr. Ennes?

A. Yes.

Mr. Burdell. I ask the answer be stricken and I will also interpose the same objection.

The Court. The answer may go out. Objection sustained.

Mr. Rontzohn. Q. The same question as to the mill owners represented by Mr. Edwards and Mr. Gaetjen, that is, the other mill owners, whoever they were, over here on this side of the Bay, did you obtain contracts with other mill owners that were not represented by them?

Mr. Burdell. The same objection.

The Court. Sustained.

Mr. Rontzohn. Now, if your Honor please, at some other time we would like to make that offer.

The Court. Very well. . . .

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Q. I show you here some exhibits that have been produced, I am not going to introduce the exhibits, your Honor, but I would ask Mr. Kelly if he would indicate the firms that were unionized in 1938, with contracts identical with the ones here in evidence. The firms are on the top of each one of these.

Mr. Burdell. Do you mind if I look at them a minute?

Mr. Faulkner. No.

A. Atlas Stair-building Company, that was one signed August 15, 1938.

Q. Signed what date?

A. August 15, 1938.

Mr. Burdell. Do you have a list of those?

Mr. Faulkner. They have been in and out of our possession, but they came in here at the trial.

The Court. Why don't you make a list of them and you can save time.

Mr. Faulkner. Suppose I read them off. There are really not very many.

The Court. Very well, read off the names.

Mr. Burdell. I am going to object to it, because I do not see any materiality, and I do not see any foundation laid.

Mr. Faulkner. These came out of the union's possession. They are original contracts, aren't they, Mr. Kelly?

Mr. Burdell. I take it these will show these companies were unionized in 1938, but is there anything to show they were not unionized before?

Mr. Faulkner. They may have had a contract before.

Mr. Rontzohn. Some of them did not get in until 1940.

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The Court. I cannot see that they are material. I asked you before to make a list of them and you can make your offer and I will rule upon it.

Mr. Faulkner. I will read the names off, it will only take a short time. * * *

Thereupon, the names of some forty firms with 1938 contracts were read.

The Court. Are any of those firms whose names you have read corporations, partnerships, or individuals, defendants in this case now on trial?

Mr. Burdell. One is, your Honor, possibly two that I know of. The Brannan Street Planing Mill and Eureka Sash, Door & Molding Company.

The Witness. That is a different Eureka mill.

The Court. Those are separate contracts made by the unions with persons who are in no way involved in the trial now before the Court.

Mr. Faulkner. Yes, except that they signed the identical contract.

The Court. Yes.

Mr. Faulkner. And the testimony is offered for the purpose of showing that at the time, in conformity with the position taken by the respective sides, that paragraph 8 of the Arbitration Award, paragraph 2 of the Agreement, was to provide a condition of unionization of plants in this area. In other words, there was an attempt to unionize, and the only distinction between the contracts they ultimately entered into and the contract actually entered into, I would like to read into the record, it is only a line.

The Court. Read it.

Mr. Faulkner. 'Agreement for the purpose of promoting the mutual interest of the parties signatory hereto between (blank), that is, between the various people whose names I had read and the Bay Counties District Council of Carpenters as follows:

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The wages, hours and working conditions of the Cabinet Makers, Carpenters and Millmen employed by the different firms by whom the agreement was signed—will be as stipulated in the agreements between the District Council of Carpenters, Millmen's Unions No. 42 and 550 and the Lumber Products Association, Inc. and the Cabinet Manufacturers Institute, Inc., Northern Division, which is as follows— and then the Exhibit 132—

The Court. Are you going to read any more of that?

Mr. Faulkner. No. In other words, Exhibit 132 is mimeographed and became a part of every agreement with these people.

Mr. Burdell. I desire to move to strike everything that Mr. Faulkner has read, because it does not prove what he wants to prove, it is immaterial.

The Court. I think it is immaterial, it may go but. Do I understand you are going to offer these in evidence?

Mr. Faulkner. No, I have completed my proof, I think it is relevant in this case. The Government says that paragraph operated to provide for a certain situation, and here are constant attempts to unionize other people. The position we have taken is that that paragraph had to do with the local condition where competitors of these people would be paying a different rate, and as long as that competition existed it is evidence by itself that these people were not unionized. I think it is within the issues of the case.

The Court. Have you any motion that you wish to make?

Mr. Burdell. Yes, I move to strike the whole thing on the ground it is immaterial, irrelevant, and incompetent, and no foundation laid, assuming facts in evidence and not within the issues of this case.

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The Court. The motion is granted. . . .

Mr. Faulkner. Your Honor, at the time of the noon recess, Mr. Burdell had made an objection which your Honor sustained. In connection with that objection, one of the grounds stated was that a proper foundation had not been laid in identifying these papers. I don't want to pursue the matter any further in the light of the Court's ruling, but that would be a sound objection. In other words, I had not completed the identification of the documents. If Mr. Burdell will withdraw that and the record will clearly show your Honor's ruling was based on the materiality, I won't have to devote any more time to it. I think that was your Honor's position, was it not?

The Court. Yes.

Mr. Faulkner. Will you withdraw that ground of your objection?

Mr. Burdell. Well, my objection is based on the fact it is not material and also that no foundation as to materiality has been laid.

Mr. Faulkner. Well, you did not mean that was not any foundation that these were original agreements that were entered into on the day they bore date?

Mr. Burdell. No, that is not part of my objection.

Mr. Faulkner. I think that clears it up.

The Court. Yes."

FILE COPY

No. 10⁴

APR 4 1946

CHARLES ELWORE ORFELY

IN THE
Supreme Court of the United States
October Term, 1945

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, *et al.*

Petitioners.

THE UNITED STATES OF AMERICA,

Respondent.

**SUPPLEMENTAL BRIEF FOR THE PETITIONERS
THE BAY COUNTIES DISTRICT COUNCIL
OF CARPENTERS, *et al.***

**Upon the Questions Propounded by the Order
Entered Herein on June 18, 1945**

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IN THE
Supreme Court of the United States
October Term, 1945

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, THE UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, MILLMEN'S UNION NO. 42, THE
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, MILLMEN'S UNION NO. 550, J. F. CAMBIANO, C. H.
IRISH, W. P. KELLY, EMIL H. OVENBERG, W. L. WILCOX AND
CHARLES ROE,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

**SUPPLEMENTAL BRIEF FOR THE PETITIONERS
THE BAY COUNTIES DISTRICT COUNCIL
OF CARPENTERS, *et al.***

**Upon the Questions Propounded by the Order
Entered Herein on June 18, 1945**

(1) The proof requirements of Section 6 of the
Norris-LaGuardia Act are the minimum to which a
defendant is entitled in a criminal prosecution under
the Sherman Act.

It is settled by the decision in *United States v. Hutch-
son*, 312 U. S. 219, and reiterated in the case of *Allen
Bradley Company et al. v. Local Union No. 3, International*

* Case No. 667, October Term, 1944.

Brotherhood of Electrical Workers, 89 Law. ed. Advance Opinions 1441, that whether trade union conduct constitutes a violation of the Sherman Act is to be determined by considering that law jointly with the Clayton and Norris-LaGuardia Acts as three "interlacing statutes".

Since the provisions of the Clayton and Norris-LaGuardia Acts have the substantive effect of taking the sting of criminality from the enumerated conduct otherwise condemned by the Sherman Law, we can conceive of no valid reason for denying full application of the jurisdictional and evidentiary rules contained in Section 6. Respondent has apparently conceded the proposition by arguing not that the section was inapplicable, but that the requirements of the section were met by the instructions given. (Former Brief for The United States, p. 42 *et seq.*)

Section 2 of the Norris-LaGuardia Act, 29 U. S. C. A. 102, declares the public policy of the United States and recites among other things the necessity for protecting the rights of the worker to organize into unions and engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." It then expressly enacts the sections of the statute which follow as "definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States."

We reach in Section 6 of the Act, 29 U. S. C. A. 106, provisions couched in clear and inclusive terms. It reads:

"Sec. 106: Member of union when not liable for acts of others. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of such acts, or ratification of such acts after actual knowledge thereof."

The Section begins as a limitation upon the jurisdiction and authority of the courts of the United States, subject

to exception only upon the degree and character of proof there meticulously specified.

In *Lauf v. E. G. Shinner and Co.*, 303 U. S. 323, 330, the Norris-LaGuardia Act is described as being unquestionably within the power of Congress "to define and limit the jurisdiction of the inferior courts of the United States".

The characteristics of Section 6 are well stated in the case of *Cinderella Theater Co. v. Sign Writers' Local Union*, 6 F. Supp. 164 (E. D. Mich. 1934), where it is said, p. 171:

"I conclude that this provision, if not within the power of Congress, already considered, to define and limit the jurisdiction of this court, is, in the language of the Supreme Court in *Fong Yue Ting v. United States*, 149 U. S. 698, at page 729, 13 S. Ct. 1016, 1028, 37 L. Ed. 905, 'within the acknowledged power of every legislature to prescribe the evidence which shall be received; and the effect of that evidence, in the courts of its own government.' To the same effect is *Bailey v. Alabama*, 219 U. S. 219, 31 S. Ct. 145, 55 L. Ed. 191."

The manifest general purpose of Section 6 is to make responsibility or liability for any unlawful act done in carrying out union objectives and resulting labor disputes arise solely from personal acts, through "actual participation", "actual authorization", or "ratification . . . after actual knowledge".

The common denominator in the above phrases through which the jurisdiction or authority of the Court may attach to enforce responsibility or liability is the word "actual". The word has its genesis in activity, fact and reality (Webster's New International Dictionary, p. 24).

Used in conjunction with the word "participation" it means to actively take part in the unlawful act (Webster's New International Dictionary, p. 1573).

The phrase "actual authority" has received varying definitions under the law of agency. Regardless of shades of meaning it is essentially power actually granted.¹ It must be evidenced by the conduct of the principal, and not the acts or words of the agent.² It is also trite to point out that authorization to do an unlawful act cannot be implied from the authority given to do a lawful act.³

It is to be observed that Section 6 deals specifically with so-called "unlawful acts". The words "actual authorization of such (unlawful) acts", couple the required authorization directly with the unlawful acts so as to predicate responsibility solely upon a direct and intentional authorization of such specific acts. Some courts had been prone to regard violence and other unlawful acts as incidents to strikes and other conventional union methods, and therefore within the scope of such activities. See Frankfurter and Greene, *The Labor Injunction*, pp. 74, 75.

The same strict prerequisite is again bespoken by the language of the last condition upon which responsibility can attach, i. e., "ratification of such acts after actual knowledge thereof".

"Ratification" may generally be defined as the subsequent adoption and affirmance by one of an act which another has previously assumed to do for him without authority. Such a confirmation involves an intentional acting upon full knowledge of all material facts.⁴

Explicit in Section 6, then, is the mandate that culpability of any union individual or entity, participating or

1. 2 Corpus Juris Sec., p. 1184 et seq., Sec. 91, subsec. C(1) (2). 2 Amer. Jur., p. 68 et seq., Secs. 85, 86, 87. 2 Words and Phrases, Permanent Ed., p. 214.

2. *Cox v. Pabst Brewing Co.* 128 F.2d, 468, 472 (C.C.A. 10—1942).

3. *Call v. Palmer*, 176 U.S. 98.

4. *Mechem on Agency*, 2d Ed., Vol. I, p. 260, Sec. 347. 2 Corp. Jur. Sec., 1068, Sec. 34. 2 Amer. Jur. 165, Sec. 208. 36 Words and Phrases, Permanent Ed., pp. 119, 132.

interested in a labor dispute, shall be personal. To be responsible for the act of another, such a defendant must command or procure the unlawful act, or adopt it by ratification.

It is not an answer to say that at the outset of its charge the Trial Court gave the conventional general instruction about reasonable doubt. The Trial Court's viewpoint was that Section 6 and the formula therein contained had no bearing on the case and was no part of the law to be given to the jury. It not only failed to mention that section and its formula in its affirmative charge, but it refused the Union's various requests, expressed both in the language of the section and in paraphrase, that that section and its formula be placed before the jury as expressive of the legal tests conditioning a finding of criminal responsibility. Thus, the fallacy in the Trial Court's view of the law and the crucial prejudice resulting therefrom went far too deep to be cured or even affected by any conventional generality as to the requirement of proof beyond a reasonable doubt.

The Trial Court did not give that general instruction with any specific reference to the basic issue of a union's criminal responsibility for the unlawful acts of its officers; and, when that issue was reached in the course of its charge, the Trial Court threw aside Section 6 and the tests and conditions therein formulated and substituted an altogether different concept, to wit: the civil concept of the principal's imputed responsibility for the acts of an agent. Indeed, the Court did not even require that the proof measure up to the full test in a civil case, for the Court expressly authorized the jury to convict a defendant union of criminal responsibility merely because of an act which the agent "assumed" to do for his principal.

(2) Section 6, as related to Section 13(b) of the Norris-LaGuardia Act, clearly embraces the activities of petitioners here involved.

The application of Section 6 is expressly made dependent upon participation or interest in a labor dispute. Following the designation of what cases shall be held to grow out of a labor dispute in Section 13 (a), we find the participants in a labor dispute defined in Section 13 (b) as follows:

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation."

The structure of the opening sentence of this paragraph patently is linked in a definitive way to the persons referred to in Sections 4 and 5 as person or persons participating or interested in a labor dispute. Follows an extremely far-reaching designation of the industrial or occupational area within which participation or interest can arise.

The history of this legislation, and the general and inclusive nature of the terms employed in the statute, denote the design to avoid emasculating narrowness of interpretation. Nor has it ever been strictly construed as it affects the rights of workers.⁵

5. Lauf v. E. G. Shinner and Co., 303 U.S. 323; 329; New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552, 560; Drivers' Union v. Lake Valley Co., 311 U.S. 91; United States v. Hutcheson, 312 U.S. 219.

The language of Section 13 (b) is in no sense restrictive in its own content, nor in its relation to other sections of the Act, except as it defines the extensive area within which participation or interest in a labor dispute may exist. It is to be noted that such participation or interest is not gauged therein by the conduct of the party concerned, but by the fact of being engaged in the same industry, trade, craft, or occupation in which the dispute occurs.

Section 6 plainly covers all character of union organizations, or members thereof, engaged in the same industry, trade, craft, or occupation in which a labor dispute occurs. In fact, it extends to a party with only an indirect interest therein.

Respondent's brief on the former argument, pages 21, 26-28, concedes that these petitioners acted in a labor dispute not only with the Bay Area employers but with others outside the State.

There is simply nothing, therefore, in the text of Sections 6 and 13(b) as interrelated, or as separate integral parts of the Norris-LaGuardia Act, which suggests a doubt as to the application of Section 6 to petitioners in this case. Under settled rules of construction for the statute, rights thereunder should be given fullest scope, particularly in a criminal case of this nature.

(3) The words "association or organization" appearing in Section 6, as related to Section 13(b), include unions of the character of petitioners.

Expressly and implicitly throughout the Norris-LaGuardia Act runs the theme of the worker's right to self-organization and concerted action. It is common knowledge that an unincorporated association is the customary form of union organization.

Such is the character of petitioners The Bay Counties District Council of Carpenters of the United Brotherhood

of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42 and The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550 (R. 263, 264).

It seems to us beyond doubt that all of the benefits of the Norris-LaGuardia Act extend to any form of union organization or entity which is legally recognized, whether unincorporated or corporate. In any event, Sections 6 and 13 (b) make common use of the term "association".

We presume that discussion is not desired concerning the application of Section 6 to an employer association, or person connected therewith, since no trial question affecting employers is before the Court.

(4) The Court erred in the oral charges as to the responsibility of the unions for the acts of their agents and in refusals to charge upon the subject-matter of Section 6 of the Norris-LaGuardia Act for the benefit of all of these petitioners.

(a) The Union Organizations

As applied to the three petitioners which are union associations, the Court instructed the jury that "The act of an agent done for or on behalf of a . . . (association) and within the scope of his authority, or an act which an agent has assumed to do for a . . . (association) while performing duties actually delegated to him, is deemed to be the act of the . . . (association)" (R. 1532, 1137, 1138).

For the benefit of the unions, the following instructions were requested and refused, and exception taken:

"You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind

any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act," (R. 1532, 1172).

"You are instructed that no labor union or organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof" (R. 1532, 1173).

It is apparent that the Court rejected instructions expressly patterned upon the language of Section 6 and failed to give the equivalent. On the contrary, the Court charged that the unions would be responsible as their own act for the act of an agent done for or on behalf of the union and within the scope of his authority, or an act which an agent had *assumed* to do while performing duties *actually delegated* to him. Here we find the converse of what is required by Section 6. Indeed, entirely removed and apart from the Norris-LaGuardia Act, the instruction proclaims the insupportable doctrine that an agent can assume to make his principal a party to a crime. By coupling the word "assumed" with the words "actually delegated" the language serves to set apart the act thus "assumed" and remove and distinguish it from the authority "actually delegated". To "assume" is "to take to or upon one's self", "to pretend to possess; to take in appearance only; feign". It is akin to "supposed", "pretended" or "make-believe" (Webster's New International Dictionary, p. 141). Acts which one "assumes" to do approach being the opposite of acts actually "authorized" by another.

(b) The Individual Union Members and Officers

The Court likewise erred in denying application of Section 6 for the benefit of petitioners who are union members or officers. Such an instruction was requested in the following form:

"You are instructed that no individual defendant who is an officer or member of one of the labor organizations involved can be found guilty in this case for an unlawful act, or acts, if any, of other officers, members or agents of such union organization, except upon clear proof from the evidence that such individual defendant actually participated in or actually authorized such an act or ratified such unlawful act, if any, after actual knowledge thereof" (R. 1533, 1174).

This instruction was refused and no other instruction framed upon Section 6 of the Norris-LaGuardia Act was given. Instead the jury was charged only upon general principles of conspiracy, without any qualification worked by the Norris-LaGuardia Act in a case of this nature.

Whether tested by the provisions of Section 6 of the Norris-LaGuardia Act, or by general principles well settled in criminal law, the instructions and refusals to instruct were basic error. (*United States v. Int. Fur Workers Union*, 100 F. 2d 541; 51 (C.C.A. 2—1938); *Truck Drivers Local No. 421, etc. v. United States*, 128 F. 2d 227, 235 (C.C.A. 8—1942); *United States v. Food and Grocery Bureau of So. Calif.*, 43 F. Supp. 966, 971 (S. D. Calif. 1942); 22 Corpus Juris Secundum, p. 149, §84.)

(c) The instructions and refusals to instruct were in this regard extremely prejudicial to each of these petitioners.

As we read the decision in *Allen Bradley Company v. Local Union No. 3, International Brotherhood of Electrical Workers*, 89 Law. ed. Advance Opinions 1441, a closed shop agreement, both as to men and materials, is un-

questionably legal. It is only when the employer-employee understandings look not merely to terms and conditions of employment but also to price and market control that illegality arises.

The line of demarcation in union conduct is between activity directed to terms and conditions of employment, and activity in assistance of a non-labor group which purposes "employer-help" in controlling markets and prices. Existence of a purpose to aid and abet manufacturers or traders in doing the things prohibited by the Sherman Act must then be the ultimate test of union guilt. A purpose to unionize, standardize wages upward, and to combat substandard goods in the process, or a purpose to aid and abet employers in controlling markets and prices becomes the determinative question. Terms and conditions of employment inherently involve an agreement and understanding between employers and employees. Successful union activity must comprehend the consummation of its objectives in such an agreement. In this situation it was of the utmost importance to each defendant that his or its responsibility be judged under the light of clear definition of applicable rules of law.

(d) Consideration of the evidence affecting the local unions on the issue of guilt by imputation

In discussing the state of the evidence as to each defendant on the issue of responsibility for the acts of others, these petitioners fall naturally into two classes. One group is the local unions, and the other the individual members or officers thereof.

Composing the first, is the Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America, hereafter called Bay Counties District Council; United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42,

hereafter called Local 42; and The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, hereafter called Local 550.

All are voluntary unincorporated associations (R. 263, 264), affiliated with the United Brotherhood of Carpenters and Joiners of America, an international trade union affiliated with the American Federation of Labor (R. 172).

The two Locals, 42 and 550, are millworker unions (R. 753, 759). The Bay District Council is composed of representation from local unions chartered by the United Brotherhood and located in counties of the Bay Area (R. 415, Ex. 2, p. 3). Among such affiliates are Local 42 (San Francisco) and Local 550 (Alameda).

The evidence on this issue as to these three petitioners is similar and will therefore be discussed together. All necessarily acted in their external business relations through representatives and agents.

Employer contracts with Locals 42 and 550 were submitted to the Bay District Council for approval, and the Secretary of the latter organization helped negotiate such contracts at the request of the local unions involved (R. 829). To become effective such contracts had to be approved by vote of the members of the locals (R. 415, Ex. 2, p. 13).

The evidence relating to the negotiation and approval of the 1936 agreement, and the negotiated and arbitrated agreement of 1938, is summarized in our main brief, pages 10-13.

In conducting employer relations, the unions established a Conference Committee composed of delegates from the local unions involved. This committee in turn selected from its members delegates to constitute a Negotiating Committee which dealt with employers (R. 767, 819). The Negotiating Committee had no power to make a move without approval of the union membership (R. 1007).

In negotiating the 1936 agreement, Locals 42 and 550 were represented by a committee of five, composed of two members from each local and the Secretary of Bay District Council. A committee similarly constituted negotiated in 1938 (R. 820), and in the arbitration proceedings two representatives acted,—Ryan, Secretary of Bay District Council, and Kelly, a member of Local 42 (R. 615).

Apart from the negotiation and signing of employer contracts, the business of the unions, including enforcement of the employer contracts, was conducted through the medium of so-called business representatives or agents (R. 778, 930-931).

All of the considerable volume of evidence related directly or indirectly to activities of these local unions, so that it is obviously impractical to attempt to detail it for the purpose of this discussion. Its general scope may be summarized, as follows:

First, we have the 1936 and 1938 contracts containing the restrictive provisions as to the use of men and material, together with testimony covering the negotiations and arbitration incident to the execution thereof.

Then we have evidence of union activities, all involving lawful methods, as revealed by union minutes, testimony as to conduct of union officials and members, or correspondence sent or received by such officials or members.

Under any interpretation, the evidence shows nothing more than either enforcement of the union stamp, or of the contract provisions, containing the policy not to work on substandard material as measured by the working conditions of the agreements.

The minutes of the unions affirmatively show that as to the 1936 agreement, wherein the challenged restrictive clause was first included, the membership considered it on the floor of the union only as a closed-shop agreement, and the wage scale was accepted after the most bitter controversy between union members. In fact, the vote

of Local 42 was 242 against and 90 for acceptance of the agreement. It was approved by the combined vote of the two locals only because of the overwhelmingly favorable vote of Local 550, Alameda County having been almost totally unorganized until gaining closed shop provisions under this 1936 agreement (R. pp. 1018-1023, 813, 814, 427, 759). The 1938 agreement, carrying forward a similar provision, was based upon arbitration of the wage scale (R. 614-617, 768, 770).

Every union activity during the period of the indictment related to the creation and maintenance of proper working conditions, and the effecting of labor objectives in connection therewith.

If any act of a union representative could be construed as supporting a finding that it was done in combination with employers with a purpose of aiding and abetting those employers in doing a thing violating the Sherman Act, that consequence would show the vital importance to the union organizations to have the issue of their responsibility for such an act sharply and clearly defined. The unions suffered extreme prejudice when the jury was not told that their responsibility for an unlawful act of a representative or agent must rest upon actual authorization, or ratification after actual knowledge, but instead was instructed that they would be liable for an act an agent had "assumed" to do while performing duties actually delegated to him.

(e) Consideration of the evidence affecting the individual defendants on the issue of responsibility for the acts of others

The conventional union conduct involved here could be unlawful only by reason of participating in an illegal combination of employers. Yet, in a joint, concerted act, one individual might act as a part of, and another wholly apart from, an employer conspiracy. This demonstrates the need for judging individual guilt or innocence.

under the qualifications worked by the Norris-LaGuardia Act upon the general rules of conspiracy. It is imperative that the case of each individual defendant be analyzed solely from the standpoint of personal conduct, and not merely as concerted activity in combination with a fellow union member who may or may not be engaged in an unlawful conspiracy with employers. In other words, an unlawful purpose of one should not be imputed to another because of a combined and concerted act, identical in all respects except for employer connection.

This is all very close to the core of the public policy proclaimed by the Norris-LaGuardia Act. There the necessity is declared, and the right sought to be effectuated, for full freedom of workers to combine and engage in concerted action, all with reference to the establishment between employers and employees of proper terms and conditions of employment. The act gives realistic recognition to the nature and characteristics of the industrial strife. The command is clear that a participant in the arena shall answer for his own conduct alone—that responsibility for unlawful acts shall be strictly personal. In coordinating any conflict of policy expressed by the Sherman, Clayton and Norris-LaGuardia Acts, there is clearly no difficulty in following the letter and spirit of this requirement. If individual workers, or union organizations, are to be circumscribed by the fear that they are responsible for an ulterior purpose which may attend the conduct of another with whom they are necessarily combined, it serves to strangle without reason the basic purpose of the statute.

An examination of the state of the evidence as it affects each individual reveals what is inherent in union conduct of the nature involved. Common to each defendant was concerted activity in combination with fellow union members and officers. The relevancy to each of the tests prescribed by Section 6 of the Norris-LaGuardia Act is clear.

(e-1) Petitioner J. F. Cambiano

The substance of the evidence affecting this defendant is that he was an organizer for the United Brotherhood of Carpenters and Joiners of America. He was delegated by the General President of the United Brotherhood to assist the local unions in straightening out differences with Pacific Manufacturing Company of Santa Clara, in its relation to the 1938 arbitration award of \$9.00, while that company was paying \$8.00. The result was the six-county setup at a uniform rate of \$8.50 per day. (R. 1034, 1035).

The activities of this defendant related to that dispute following the 1938 arbitration award recognized by San Francisco, and claimed by the unions also to be binding upon Alameda. He participated in formulating a policy among the local unions involved to settle the dispute, and then assisted the representatives of the local unions in negotiating the contracts which effectuated the policy through the six-county setup. Santa Clara and Contra Costa Counties were thereby brought in under contracts substantially uniform with the bay area counties of San Francisco, Alameda, San Mateo and Marin which were under the jurisdiction of the Bay District Council (R. 1033-1114).

(e-2) Petitioner C. H. Irish

This defendant was a member of Local 550, employed as a millworker. He was president of the local for the year starting July, 1938. He acted as a member of the Conference and Negotiating Committees for his union in 1938. As a member of the Negotiating Committee he signed the memorandum to submit the unsettled questions to an arbitrator, and as a negotiator, signed the 1938 contract which followed the arbitration (R. 1005-1013, 290, 291).

(e-3) Petitioner W. P. Kelly

He was a millman by trade and belonged to Local 42. He served as a negotiator for Local 42 in 1936 and 1938 (R. 753, 767). He signed the agreement for arbitration in 1938 in behalf of Local 42 (R. 768-770), and acted for the unions on the arbitration board as technical advisor (R. 771). In conjunction with other union members he spoke at the meeting of Local No. 550, prior to the vote upon approval of the 1936 contract (R. 427), and he signed such contract in behalf of Local No. 42 (R. 287). He also signed the negotiated and arbitrated agreement of 1938 in behalf of Local No. 42 (R. 290).

(e-4) Petitioner Emil H. Ovenberg

He was a millworker employed at his trade and a member of Local No. 550 (R. 812). He, with one other, acted on the Negotiating Committee for his local in 1936 (R. 815), and signed the 1936 contract in behalf of Local 550 (R. 287). He was also a member of the so-called Conference Committee consisting of representatives from Local 550 and Local 42 (R. 819), and a member of the Joint Committee between employers and employees. This was set up under the terms of the agreement to iron out disputes between employers and the unions arising under the agreement (R. 819). He also acted for Local 550 in the 1938 negotiations (R. 820). He signed for it the agreement to arbitrate (R. 768-770), and also the negotiated and arbitrated agreement (R. 291).

(e-5) Petitioner W. L. Wilcox

This defendant was a millman belonging to Local 42. He was elected business representative in June, 1938 for a year; was elected president in 1939 and served for a year, was re-elected business agent in 1940 and had acted as such to the time of trial (R. 930).

He took no part in the negotiation of the 1938 agreement, nor the arbitration proceedings. He signed the 1938 negotiated and arbitrated agreement for his local as business agent (R. 931, 290). His activities as business agent as reflected in certain union minutes referred to non-union material (R. 932).

(c-6) Petitioner Charles Roe

We will state the substance of the evidence affecting this defendant with more particularity, because it involves an isolated joint act, allegedly an overt one under the claimed conspiracy, and illustrates how different factors may actuate the same combined and concerted union activity.

The prosecution witness, Harvey Brown, a dealer for Aladdin Lumber Company of Portland, represented them as salesman for ready-cut homes. He met defendant Roe about March 1, 1940, when the latter came to the witness Brown's office, with a gentleman introduced as McGinnis, a representative or secretary of a carpenter union. Brown testified that defendant Roe interrogated him as to the savings by the ready-cut system and was told approximately twenty per cent. That Roe then said in general effect that such would affect their labor setup by reducing the amount of labor, that they had stopped other companies from building ready-cut houses locally, and that he was virtually telling him he could not bring in ready-cut houses. That if they were brought in union labor would not put them up. That Roe asked if the lumber had a union label on it and was told it did. That after such meeting he did not see Roe again. That shortly after he received a summons to come to Alameda Construction and Building Trades Council for a meeting and attended. He only saw one man seen before, Mr. McGinnis. There were about twenty-five others there—understood to be business agents.

He was asked about his business connection with Aladdin Company and the union label and the mill in Portland. The purpose was whether the Aladdin Company should be placed on the blacklist or "we do not patronize list" in Oakland—for the reason stated because they were non-union in the mill and didn't pay the same wage scale as in Oakland. He received no word as to the decision and had no further contact with Roe or the other persons (R. 343-347).

Defendant Roe's own testimony was to the following effect. That he was and had been a member of carpenter locals, but not a millmen's local. (No carpenter local is involved in the case.) That while a member of carpenter local 1622 it became affiliated with Alameda County Building and Construction Trades Council and he became assistant representative of the latter organization. His duties were to assist negotiating committees and cooperate with various crafts affiliated with the Council. He was not a member of any negotiating or conference committee of defendant millmen's locals 42 or 550. He had nothing to do with any of the contracts involved and during 1936 to 1940 he did not serve in any position in behalf of local 42 or 550.

That he recalled the meeting with Mr. Brown early in 1940. Walter O'Leary was present. He asked Brown the method of operating Aladdin Ready-Cut House Company. That Brown stated they were union but he had never heard of them being union and after the conversation he sent Brown a citation to appear before the Board of Business Agents of the Building Trades Council. That he, Roe, was unable to appear at the meeting, being out of town. That his conversation with Brown was along the line of organization—and whether the product bore the label. Brown stated it did—with studdings, floor joists and so on. That he congratulated Brown because the Brotherhood never put it on that type of product. That he discussed the erection and labor supply. That Brown

stated they contracted it out, which made it a piece-work proposition against the rules of Bay District Council. That then Roe stated under that condition they could bring in all they wanted, but the carpenters would not furnish carpenters for it. That he absolutely didn't state to Brown his company would not be allowed to ship their products into this area. That he didn't see Brown again but reported to the Council on the meeting and the way he was operating. That he had determined the status of the company and they were still operating one hundred per cent non-union. There was no action by the Building Trades Council.

That he had not heard of, or known of, nor had he been a party to any secret agreement or understanding between the labor and employer defendants with respect to mill work coming into California from outside the State (R. 1024-1027).

On cross examination, that he had never been employed by Local 42 or 550. He gathered information for the negotiating committee of Local 550 for a very short time, four or five weeks, as an investigator. That he might have been called a special business agent by a Recording Secretary.

His meeting with Brown was the early part of 1940. He asked O'Leary to go along because he had some business in that part of town and they made the trip at the same time.

That he noticed Brown running an advertisement he had a ready-cut house, union made, and to his knowledge there were none manufactured in the United States under union conditions. That he arranged the appointment to discuss the labor problem (R. 1027-1029).

Here we have combined action of the defendant Roe with defendant Walter O'Leary. The latter was a business agent for Local 550 and represented that union in connection with the 1936 and 1938 employer contracts. He was one of the three defendants held by the Circuit Court

of Appeals to be immune from prosecution because of compulsory testimony before the grand jury (R. 981-1004). On the other hand, defendant Roe was not representing Local 550 and had no connection with either contract. By nature, the activity of either could be, and at the same time that of the other not, a part of an unlawful combination with employers. It was the right of the defendant Roe, and of each defendant, to have his or its conduct judged under the prerequisites of Section 6 of the Norris-LaGuardia Act.

CONCLUSION

The judgments as to these petitioners should be reversed.

April 1, 1946.

Respectfully submitted,

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FILE COPY
No. 10

IN THE
Supreme Court of the United States
October Term, 1945

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, ET AL.,

Petitioners

VS.

THE UNITED STATES OF AMERICA.

Respondent

**REPLY BRIEF FOR THE PETITIONERS
THE BAY COUNTIES DISTRICT COUNCIL
OF CARPENTERS, et al.**

**Upon the Questions Propounded by the Order
Entered Herein on June 18, 1945**

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The Issues for Rejoinder

The position of the Government upon the questions propounded by the order made herein on June 18, 1945, narrowly confines the issues for a reply.

The parties are in accord that Section 6 of the Norris-LaGuardia Act applies to criminal prosecutions under the Anti-Trust Act. Applicability of this section to the labor defendants in this case is conceded (Brief for the United States on reargument, pp. 4-8).

These questions emerge:

1. What are the requirements of Section 6?
2. Was the case tried in conformity with such requirements?
3. If not, what effect did the failure of the Trial Court to apply the section have upon the rights of each defendant?

There can be no question but that each defendant sought to invoke the rights existing under this law, and duly excepted and assigned error upon denial (R. 1529-1533). Even if they had not, Section 6 was enacted as a limitation upon the jurisdiction and authority of the court (Norris-LaGuardia Act, 29 U.S.C., Section 102).

At the outset we wish to correct any confusion which might arise from the statement contained in the brief for the United States (p. 44) that the individual labor defendants have not raised any question in their petitions for certiorari or original briefs in this Court as to the adequacy of the evidence on this issue as to them. The question of the error here involved as to the individual labor defendants is the subject of Specification No. 10, p. 5, of our petition for certiorari, based upon the refusal to instruct the jury as to the requirements of Section 6. The general insufficiency of the evidence as to all of these petitioners is urged in our original brief for petitioners, *The Bay Counties District Council of Carpenters, et al.*, pp. 7-27, based upon the immunities of the Clayton and Norris-LaGuardia Acts. Upon the points designated for reargument, the question as to these petitioners is not the sufficiency of the evidence irrespective of the principles of law in issue, but rather the proper tests to be applied to that evidence in determining the question of guilt or innocence.

The Requirements of Section 6

The Government's brief on reargument, p. 4, begins with the premise that Section 6 merely prescribes the rule applicable in criminal cases apart from the Norris-LaGuardia Act.

Yet Respondent thereafter launches into an argument that Section 6 prescribes only the rule of imputed responsibility applicable to civil cases. Respondent contends that "actual authorization of such (unlawful) acts," means authority "implied" from a general grant of authority. In other words, the ordinary civil agency doctrine that a principal is liable for an agent's acts "within the scope of his authority" is suggested as the true meaning. The negative is then asserted that the history of the Norris-LaGuardia Act shows no intention to require an express authorization for each individual act.

The plain, simple language of this section belies the argument. The direct subject matter is responsibility or liability for the unlawful acts of others—in the language of the statute—" * * * *unlawful acts* of individual officers, members or agents * * *". Such responsibility is made to depend upon " * * * clear proof of actual participation in, or actual authorization of, *such acts*, or ratification of *such acts* after actual knowledge thereof." (Emphasis added.) Defendants cannot possibly advance a stronger answer than to quote this crystal-clear language of the section. The terms of the statute require no clarification.

1. The remedy sought to be effected by Section 6 gives no aid to the Government's contentions.

After freely conceding that Section 6 affects Sherman Act cases, Respondent urges at some length that the evil at which Section 6 was directed was not the type of situation involved here. It is pointed out that some proponents

of the Norris-LaGuardia Act were particularly conscious of incidents where unions and their officials had been held liable for unauthorized acts of violence of individual members based upon an alleged application of the law of conspiracy.

The rule of Section 6 must necessarily be of general and uniform application. Specific incidents which may have prompted its enactment would throw only indirect light (if any at all) from the standpoint of judicial interpretation.

Whatever is to be gained from this source of inquiry militates against the position of the Government. Upon the construction offered here by Respondent, a union would still be held liable for the acts of violence of individual members, if authority could be implied from the general grant of authority or the act considered to be within the scope of authority,—as, for example, authority to participate and assist in a strike by the union. And this would follow even without reference to the character of instruction found in the instant case where the jury was charged that defendants would be liable for “an act which an agent has assumed to do * * * while performing duties actually delegated to him.”

2. Section 5 provides in clear terms a formula and criterion for criminal responsibility made equally applicable to corporations, associations and individuals.

The Government claims that the legislative history shows no intention to change the principles of the law of agency. For support, reference is made to Senate Report 163, 72d Congress, 1st Session, p. 20, quoted at pp. 20, 21, of the brief for the United States.

The principles being here invoked, however, are rules of criminal responsibility. What the Government's argument misses is that the section deals with “unlawful” acts; and that the “unlawful” acts are here said to be such by reason of being crimes.

Apart from the text of the section which is itself conclusive, the following quotation from the above mentioned Senate Report shows this to the point of demonstration: "The distinction should be clear. A man operating a dangerous machine negligently injures someone and the negligence is imputed to the employer, but there is a distinction between the torts of an employee and the crimes of an employee, and criminal responsibility is not to be imputed."

Section 6 deals specifically and exclusively with "unlawful" acts. In so doing, it sets up rigid but appropriate tests of responsibility.

It is also to be observed that Section 6 relates generally to the responsibility of one party for the unlawful acts of others. It is not confined to parties in the relationship of principal and agent. It follows that the construction of the section proposed by the Government as covering acts within the scope of authority could not in practice be applied uniformly as the test.

While the formula of "acts within the scope of authority" could have no bearing as between individuals where the relationship of principal and agent does not exist, yet labor defendants with common authorized union objectives had been held to come within the principles of the law of conspiracy as accomplishing a lawful purpose by unlawful means. It is clear that Section 6 works qualifications upon such doctrine which had been invoked in labor cases prior to its enactment. It is equally clear that those qualifications are worked to the full extent that the wording of the section unequivocally declares.

3. Under Section 6 labor organizations are not liable for the unlawful act of an officer or member within the scope of a general grant of authority; actual authorization of the unlawful act is the test.

It is significant that to carry the burden of the argument to the contrary, Respondent departs entirely from the language of Section 6.

It is not profitable to examine the corporation cases where the commonly rejected defense of *ultra vires* was raised. The question here is not one of power but the existence of actual authority for a specific unlawful act.

The Government makes the halfhearted assertion that the instant case might fall within the class of cases where the mere doing of an act is a statutory offense irrespective of an intention or wilfulness, citing for comparison:

U. S. v. Patten, 226 U. S. 525, 543;

U. S. v. Reading Co., 226 U. S. 324, 373;

Addyston Pipe & Steel Co. v. U. S., 175 U. S. 211, 243.

That the principle does not apply in a Sherman Act case to the conduct of a labor organization admits of no dispute. It has been realistically recognized that many union activities may restrain trade in and of themselves without violating the Sherman Act:

Apex Hosiery Co. v. Leader, 310 U. S. 469;

U. S. v. Hutcheson, 312 U. S. 219;

Allen Bradley Co. v. Union, 325 U. S. 797, 810;

Schechter v. Union, 295 U. S. 495, 547.

The Government recognizes that in criminal cases involving individuals, it is held that a principal is liable only for his own acts or those of the agent which he has expressly assisted or encouraged, citing with others the case of *Paschen v. U. S.*, 70 F. (2d) 491, 503 (C. C. A. 7).

It is then suggested that a less stringent rule has been applied to corporations than individuals. We call attention to the fact that Section 6 does not differentiate as to the responsibility of an association or organization or its officers or members. The test of liability for the acts of others is identical as to each.

The cases cited by Respondent are not instructive in construing Section 6. The case upon which the Government seems to place principal reliance is *New York Central R. R. v. U. S.*, 212 U. S. 481. It was there held that a criminal statute which adopted the civil test as to imputed responsibility for the act of an agent was constitutional when applied to an offense committed by the omission of a required act or by purposely doing a prohibited act. The violation there involved was a rebate of freight rates to shippers.

It is enlightening to compare a pertinent portion of the Elkins Act, 32 Statutes 847, under which that case arose, with Section 6 of the Norris-LaGuardia Act. The Elkins Act provided in part that

"In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent or other person acting for or employed by any common carrier, acting within the scope of his employment, shall in every case be also deemed to be the act, omission or failure of such carrier, as well as of that person."

The opposite is found in the language of Section 6 that "no officer or member of any association or organization, and no association or organization, * * * shall be held responsible or liable * * * for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof."

The case of *Egan v. U. S.*, 137 F. (2d) 369 (C. C. A. 8), relies primarily upon the *New York Central* case and

Washington Gas Light Co. v. Lansden, 172 U. S. 534, a civil case. None of these cases had anything to do with the Norris-LaGuardia Act. In the *Eagan* case the Court stated (p. 379) the test to be, for the purposes of that case, "whether the agent or officer when doing the thing complained of was engaged in 'employing the corporate powers actually authorized' for the benefit of the corporation 'while acting within the scope of his employment in the business of the principal.' " Application of this broadly stated principle to corporate crimes where intent is an essential factor may be doubted. (See *C. I. T. Corporation v. United States*, 150 F. (2d) 85, 90—C. C. A. 9.) But regardless of the accuracy of this definition of corporate responsibility in the ordinary cases for the act of an agent, the *Eagan* case is not an authority bearing upon the proper interpretation of the tests contained in Section 6 to govern the responsibility of both organizations and individuals engaged in a labor dispute for the unlawful acts of others.

II

The charge to the jury violated the fundamental concepts of Section 6.

The charge of the Trial Court to the jury treated the Norris-LaGuardia Act as being generally inapplicable to the case. This is apparent from the instructions as a whole (R. 1150, *et seq.*), and preceding evidentiary rulings (Opening brief for these petitioners, pp. 59-73).

In the face of this, Respondent undertakes the impossibility of arguing that the requirements of Section 6 were met.

At the risk of undue repetition, we know of no better way to demonstrate that impossibility than to again quote what the Government contends to be the equivalent.

Said the Court: The unions are liable for "The act of an agent done for or on behalf of a * * * (union) and within the scope of his authority, or an act which an agent has assumed to do for a * * * (union) while performing duties actually delegated to him * * * (R. 1137, 1138).

Section 6 of the Norris-LaGuardia Act says: "No association or organization * * * shall be held responsible or liable * * * for the unlawful acts of * * * agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof." Further argument seems to us to be superfluous.

Respondent's brief suggests that the individual defendants have no standing to object to the foregoing portion of the charge. But as to them the error was one of omission. Their convictions may well have resulted from what was not said. Appropriate application of the principles of Section 6 was sought by them in Requested Instruction No. 58, reading as follows:

"You are instructed that no individual defendant who is an officer or member of one of the labor organizations involved can be found guilty in this case for an unlawful act, or acts, if any, of other officers, members or agents of such union organizations, except upon clear proof from the evidence that such individual defendant actually participated in or actually authorized such an act or ratified such unlawful act, if any, after actual knowledge thereof" (R. 1174).

Neither it nor the equivalent was given. It is common sense and settled law that a defendant is entitled to have his defensive theories presented by appropriate instructions. When a correct proposition of law, essential to the proper determination of issues before the jury, is proposed by the defendant and not given in substance or effect, the refusal is error.

Hersh v. U. S., 68 F. (2d) 796, 807 (CCA 9)

To alleviate the error of the refusal, Respondent refers to a general portion of the charge (R. 1153), which instructed that each defendant was entitled to independent consideration of the evidence as it related to his "conscious participation in the alleged unlawful acts." When this is considered in its setting, combined with a lengthy charge as to the law of conspiracy (R. 1140-1144), it is entirely lacking as a substitute for the clear mandates of Section 6.

Juries are not to be instructed by equivocal language or implication.

M. Kraus & Bros., Inc. v. U. S., Case 198, Supreme Court of the United States, October Term, 1945, decided March 25, 1946;

Bird v. U. S., 180 U. S. 356, 361;

McAffee v. U. S., 105 F. (2d) 21, 26 (CCA, Dist. of Columbia);

Hendrey v. U. S., 233 Fed. 5, 17 (CCA 6).

III

Denial of the rights under Section 6 was prejudicial to each of these defendants.

1. The Individual Defendants

Respondent dismisses the cases of the six individual union defendants with the comment that they consciously and deliberately participated in the employer-employee combination, so are guilty anyway. This assumes the propriety of a directed verdict of conviction and that there was no jury question. Regardless of approach to any of the basic issues in the case, Respondent is invariably driven to that position ultimately in an attempt to support the convictions.

The negotiating or signing of a closed shop agreement covering terms and conditions of employment certainly

cannot be a conclusive badge of guilt. It could not be under any view of the law where the agreement expressly disavowed application to interstate commerce (R. 284, 285). But clearly under the last expression of this Court, the pursuit of legitimate labor objectives or a purpose to aid and abet employers to restrain trade and stifle competition is the ultimate test. *Allen Bradley v. Union*, 325 U. S. 797.

The evidence directly affecting personal activity of each defendant is a minute portion of the whole. Yet the lengthy record is replete with acts of other union defendants combined in pursuit of common labor objectives. To say that this great mass of evidence relating to the acts of others did not weigh against each individual is to ignore reality.

As to the defendant Roe, who did not participate in the negotiation or signing of any contract and who did not even belong to a millworkers' union involved, Respondent argues that admittedly there is evidence to show that he advised a dealer not to bring in ready-cut houses, irrespective of whether they had the union label. This ignores defendants' version of the evidence which was that such material could not carry the label because the Brotherhood did not put it on that type of product; that under that condition the dealer could bring in all of the material he wanted but the carpenters would not erect it (R. 1025, 1026). The essential predicate is that the weight and effect of the evidence is not for Respondent or petitioners to judge, but for the jury. In doing so, they should judge it under applicable rules of law and not convict a defendant because of the cumulative weight of acts in which such defendant has had no part. This is particularly true where union activity identical in nature may be lawful or unlawful, dependent upon the connection with an employer conspiracy.

2. *The Local Union Organizations*

Respondent's summarization of evidence affecting Bay Counties District Council, Local No. 42 and Local No. 550, while far from complete as to acts of officers and agents of these unions, serves only to magnify the error of the charge and refusals to charge here involved. This is illustrated by the conclusion reached at page 56 of the Government's brief that the evidence is clear that the union petitioners "actually authorized" the acts of their officers and agents. It is not a question of the evidence being sufficient to satisfy Section 6. It is a question of the jury determining guilt or innocence of these defendants under the requirements of that law.

In this connection defendants take sharp issue with the interpretations placed upon the evidence by the Government. There is also much direct conflict in the testimony. For example, the statements attributed to the secretary of Bay Counties District Council (Government's brief, p. 52) were denied or explained by that individual (R. 846-850).

Respondent's brief at page 55 makes a mistaken comment concerning the vote of Local 42 against approval of the 1936 agreement. Local 42's adverse vote is not attributable to a lowering of the wage scale from \$9.00 to \$8.50. This refers to the situation in 1938 when Local 42 accepted a 50¢ reduction from the arbitration award to get a uniform agreement for six counties (R. 771-774, 834-839, 1034-1035). In 1936 Local 42 voted against the agreement as fixing a wage appropriate to truck drivers and not suitable to skilled mechanics (R. 1018-1023, 813-814, 426-427, 759). Yet this is the scale to which the employers are charged with having acceded in exchange for union assistance to exclude materials (R. 28). This, however, is all largely beside the point. We revert to the

obvious proposition that evidentiary controversies were for determination by the jury, guided by proper instructions upon applicable principles of law.

CONCLUSION

The judgment should be reversed as to these petitioners.

Respectfully submitted,

JOSEPH O. CARSON II

HARRY N. ROUTZOHN

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for Petitioners.

TRUE COPY
In the Supreme Court

OF THE
United States

OCTOBER TERM, 1944

No. 168

LEMBER PRODUCTS ASSOCIATION, INC. (a corporation), ACME MANUFACTURING CO., INC. (a corporation), EUREKA SASH, DOOR & MOULDING MILLS (a corporation), CARL WARREN, HARRY W. GAETJEN, CHARLES MONSON, FRED SPENCER, W. P. HOLMES, J. A. HART, CHARLES G. STAFSON and CHRISTIAN A. WILDER,

Petitioners,

VS.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

MAURICE F. HARRISON,

411 Sutter Street, San Francisco, California

Attorney for Petitioners.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

LUMBER PRODUCTS ASSOCIATION, INC. (a corporation), ACME MANUFACTURING CO., INC. (a corporation), EUREKA SASH, DOOR & MOULDING MILLS (a corporation), CARL WARDEN, HARRY W. GAETJEN, CHARLES MONSON, FRED SPENCER, W. P. HOLMES, J. A. HART, CHARLES GUSTAFSON and CHRISTIAN A. WILDER,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

2

*To the Honorable Harlan Fiske Stone, Chief Justice
of the United States, and to the Honorable Asso-
ciate Justices of the Supreme Court of the United
States:*

The petitioners, Lumber Products Association, Inc., a corporation, Acme Manufacturing Co., Inc., a corporation, Eureka Sash, Door & Moulding Mills, a corporation, Carl Warden, Harry W. Gaetjen, Charles Monson, Fred Spencer, W. P. Holmes, J. A. Hart, Charles Gustafson and Christian A. Wilder, respectfully pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit (R. 1697), affirming judgments of the United States District Court for the Northern District of California, Southern Division. (R. 1371.)

OPINION BELOW.

The opinion of the Circuit Court of Appeals (R. 1674-1696) has not yet been reported. The District Court rendered no opinion.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on August 23, 1944. (R. 1697.) A timely petition for a rehearing was filed on September 22, 1944 (R. 1698), and denied on October 14, 1944. (R. 1698.) The jurisdiction of this Court is invoked under Sec-

tion 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. (28 U.S.C. 347.)

QUESTION PRESENTED.

Does the indictment allege a violation of the Sherman Antitrust Act?

STATUTE INVOLVED.

Section 1 of the *Sherman Antitrust Act* (15 U.S.C., Sec. 1), viz.:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or other foreign nations, is hereby declared illegal: * * *

STATEMENT OF THE CASE.

Petitioners are a group of manufacturers of mill-work in San Francisco. They were indicted together with certain labor unions for the alleged violation of the Sherman Act. The gist and essence of the indictment is that, as part of a collective bargaining agreement covering wages and working conditions, the defendant employers and defendant unions agreed that the employers would not purchase, and labor would not work on, materials from any mill maintaining wage and working standards inferior to those established by the agreement as the prevailing standards in the San Francisco Bay area. (R. 1-25.)

The employers, the petitioners, demurred to the indictment, and the demurrers were overruled.

The petitioners later pleaded *nolo contendere*. (Cf. *Edwards v. United States*, 312 U. S. 473.) The unions went to trial and were convicted by a jury. All parties were then sentenced. The Circuit Court of Appeals affirmed the judgments.

The unions are also filing with this Honorable Court petitions for certiorari. One petition is being filed by the United Brotherhood of Carpenters and Joiners of America, represented by Mr. Charles H. Tuttle, one by Bay Counties District Council of Carpenters and Joiners of America, represented by Mr. Joseph O. Carson II, and Mr. Harry N. Routzohn, and one by Alameda County Building & Construction Trades Council, represented by Mr. Clarence E. Todd.

As the questions pertaining to the sufficiency of the indictment are the same with respect to the several groups of defendants, we hereby rely upon and adopt the statement and discussion in the petitions of the other groups.

SPECIFICATION OF ERROR TO BE URGED.

The Circuit Court of Appeals erred in failing to hold that the indictment did not state any offense and that the demurrers to the indictment should have been sustained, and in affirming the judgments of conviction.

REASONS FOR GRANTING THE WRIT:

1. The decision rendered in this case by the Circuit Court of Appeals is in conflict with the decision of another Circuit Court of Appeals on the same matter.

We refer to the decision of the Circuit Court of Appeals for the Second Circuit in *Allen Bradley Company, et al. v. Local Union No. 3 International Brotherhood of Electrical Workers, et al.*, decided October 12, 1944, not yet officially reported but reported in 5 Labor Relation Reporter, 214. The Court in that case expressly states its disagreement with the decision herein.

2. The Circuit Court of Appeals herein decided a federal question in a way in conflict with decisions rendered by this Court, to-wit:

Apex Hosiery Co. v. Leader, 310 U. S. 469;

United States v. Hutcheson, 312 U. S. 219;

United States v. Building & Construction Trades Council, 313 U. S. 539;

United States v. United Brotherhood of Carpenters, etc., 313 U. S. 539;

United States v. International Hod Carriers, etc., Council, 313 U. S. 539;

United States v. American Federation of Musicians, 318 U. S. 741;

and

National Association of Window Glass Manufacturers v. United States, 263 U. S. 403.

3. The Circuit Court of Appeals has decided an important question of federal law which should be settled by this Court, to-wit: to what extent, and at

what point, do agreements between employer groups and employee groups, made as a part of the collective bargaining process, and restraining interstate commerce, become illegal? What is the exact meaning of the language in *United States v. Hutcheson*, supra, concerning the combination of unions with nonlabor groups, and what is the present interpretation to be placed on *United States v. Brims*, 272 U. S. 549?

In the *Allen Bradley* case, supra, the Circuit Court of Appeals for the Second Circuit considered that the Brims decision could now be given only very limited effect.

4. As a further reason for the granting of the writ, petitioners adopt the grounds specified in the petitions being filed herein by other defendants, as already stated.

In this case the provision contained in the collective bargaining agreement was directed at the maintenance of proper working conditions. It was not a boycott either of out-of-state mills, as such, or of nonunion mills, as such; it was aimed equally at union mills and local mills not maintaining working standards equal to those in the Bay area, and did not reach out-of-state or nonunion mills that did maintain such standards. The Sherman Act forbids only unreasonable restraints; only such restraints as are civilly invalid at common law can be considered as unreasonable restraints under the Sherman Act. Conduct eliminating competition based upon differences in labor standards does not violate the Sherman Act; therefore an agreement be-

tween unions and employers not to handle materials produced under labor standards lower than those prevailing in the particular community is entirely valid.

CONCLUSION.

It is respectfully submitted to this Honorable Court that the petition herein for a writ of certiorari should be granted.

Dated, San Francisco, California,
November 8, 1944.

MAURICE E. HARRISON,
Attorney for Petitioners.

JAMES M. THOMAS,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

Nos. 6, 7, 8, 9 AND 10.—OCTOBER TERM, 1946.

United Brotherhood of Carpenters and
Joiners of America, Petitioner,

6

v.

The United States of America.

The Bay Counties District Council of
Carpenters of the United Brother-
hood of Carpenters and Joiners of
America, et al., Petitioners,

7

v.

The United States of America.

Lumber Products Association, Inc.,
Acme Manufacturing Co., Inc., Eu-
reka Sash, Door & Moulding Mills,
et al., Petitioners,

8

v.

The United States of America.

Alameda County Building and Con-
struction Trades Council, Petitioner,

9

v.

The United States of America.

Boorman Lumber Company, Hogan
Lumber Company, Loop Lumber &
Mill Company, et al., Petitioners,

10

v.

The United States of America.

On Writs of Cer-
tiorari to the
United States
Circuit Court
of Appeals for
the Ninth Cir-
cuit.

[March 10, 1947.]

MR. JUSTICE REED delivered the opinion of the Court.

These are criminal cases in which conviction of various
defendants has been obtained in the District Court of the
United States for the Northern District of California,
Southern Division, and affirmed by the Circuit Court of

2 U. B. CARPENTERS & JOINERS v. U. S.

Appeals of the Ninth Circuit, 144 F. 2d 546. They were charged with conspiracy to violate the Sherman Act, § 1.¹ The parties to the alleged conspiracy were of two groups: on the one hand, local manufacturers of and dealers in the commodities affected and their incorporated trade associations and officials thereof; and, on the other, unincorporated trade unions and their officials or business agents. The indictment charged that the defendants below unlawfully combined and conspired together, successfully, to monopolize unduly a part of interstate commerce in millwork and patterned lumber. The purpose and effect of the conspiracy was alleged to be to restrain out-of-state manufacturers from shipping and selling these commodities within the San Francisco Bay area of California and to prevent the dealers in that area from freely handling them. It was alleged that the conspiracy also sought to raise the prices of the products affected. To achieve the purpose, a contract was entered into between the defendants for a wage scale for members of labor unions working on the articles involved, combined with a restrictive clause, "... no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement," with specified exceptions not here material. This

¹ 15 U. S. C. § 1:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: . . . Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

clause, it is alleged, was enforced to the mutual advantage of the conspirators by some of the parties through conference or picketing or acquiescence in the arrangement. By means of the conspiracy, union workmen obtained better wages, the employers higher profits and manufacturers against whom the conspiracy was directed were largely prevented from sharing in the Bay Area business, all to the price disadvantage of the consumer and the unreasonable restraint of interstate commerce. The legal theory which was followed in their conviction was that conspiracies between employers and employees to restrain interstate commerce violate the Sherman Act.

Five petitions for certiorari were presented to this Court by different defendants either singly or jointly with others. It is sufficient for the purposes of this review to say that they raised the question of the application of § 1 of the Sherman Act to conspiracies between employers and employees to restrain commerce and, except the petitions in the employer group, the application of § 6 of the Norris-LaGuardia Act in a trial of such an indictment.² On account of the importance of the federal questions raised and asserted conflicts in the circuits, the writs of certiorari were granted.³

² 47 Stat. 70, 71:

"Sec. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

³ 323 U. S. 706-7. Compare *Allen Bradley Co. v. Local Union No. 3*, 145 F. 2d 215, and *United States v. International Fur Workers Union*, 100 F. 2d 541, 547, with the opinion of the Circuit Court of Appeals in this case, 144 F. 2d 546.

These cases were argued in the Supreme Court of the United States first on March 8, 1945. On June 18, 1945 they were restored to the docket and assigned for reargument, counsel being requested to discuss

Since these cases were taken the important question of the application of the Sherman Act to a conspiracy between labor union and business groups has been decided by us. We held that such a conspiracy to restrain trade violated the Sherman Act. *Allen Bradley Co. v. Local Union No. 3*, 335 U. S. 797. This holding causes us to approve the ruling of the trial and appellate courts on the first question presented by the certiorari but it left unresolved the question as to the application of § 6 of the Norris-LaGuardia Act, the point to which this decision is directed.

The indictment charges a conspiracy forbidden by the Sherman Act. On that issue, the power of the trial court is limited by § 6 of the Norris-LaGuardia Act. Note 2, *supra*. The limitations of that section are upon all courts of the United States in all matters growing out of labor disputes, covered by the Act, which may come before them.

It properly is conceded that this agreement grew out of such a labor dispute and that all parties defendant participated or were interested in that dispute. See § 13, 47 Stat. 73. Section 6 of the Norris-LaGuardia Act first appeared in a draft bill of the Senate Committee on the Judiciary as § 6 thereof. At that time its form was precisely the same as at present. The draft was drawn as a comprehensive substitute for S. 1482 of the 70th Congress, a bill providing only for a limitation on the jurisdiction of equity courts in the issuance of injunctions. In the 71st Congress, a similarly limited bill on the same subject, S. 2497,

(1) the scope of § 6 of the Norris-LaGuardia Act in relation to prosecutions under the Antitrust Act; (2) the scope of § 6 in relationship to § 13 (b); (3) the scope of the words "association or organization" appearing in § 6, in that section's relationship to § 13 (b); and (4) consideration of the Court's oral charge and written charges requested and refused involving § 6, in the light of objections and exceptions by each and all of the defendants and the state of the evidence on that issue as to each of them. *Journal, Sup. Ct., U. S., October Term 1944*, pp. 284-5. The cases were reargued on April 29-30, 1946, and again restored to the docket on June 10, 1946, for a third argument.

was reintroduced and a like comprehensive substitute proposed. Neither substitute was reported out of the Committee.* These substitute bills are quite similar in form to the Norris-LaGuardia Act. In substance, and therefore in effectiveness, they are the same.

In the next, the 72d Congress, the bill, H. R. 5315, which was to become the Norris-LaGuardia Act, was introduced. Section 2 succinctly states the public policy that it was designed to further—a definition of and limitation upon the jurisdiction and authority of courts of the United States in labor disputes.* That purpose was in accord with that behind the earlier drafts referred to above.* As the new bill was practically identical with these long considered committee substitutes, the hearings on H. R. 5315 were short.* But even so, the attack continued on § 6 as a restriction on the general law of agency in labor disputes.*

* S. Rep. No. 1060, 71st Cong., 2d Sess., p. 4.

In the hearings on the proposed substitute, the language now incorporated into § 6 of the Norris-LaGuardia Act was criticized as changing the rules of agency, so as to relieve organizations of responsibility for acts of their agents in labor disputes. It was defended as intended to apply the law of agency to labor unions. Hearings, Subcommittee of the Committee on the Judiciary, U. S. Senate, 70th Cong., 2d Sess., on S. 1482, Part 5, p. 759, et seq.

* 47 Stat. 70.

* S. Rep. No. 163, 72d Cong., 1st Sess.; H. Rep. No. 669, 72d Cong., 1st Sess.; S. Rep. No. 1060, 71st Cong., 2d Sess.; Hearings, Subcommittee of the Committee on the Judiciary, U. S. Senate, 70th Cong., 1st Sess., on S. 1482; Hearing, Subcommittee of the Committee on the Judiciary, U. S. Senate, 71st Cong., 2d Sess., on S. 2497.

* Hearing, Committee on the Judiciary, House of Representatives, 72d Cong., 1st Sess., on H. R. 5315.

* *Id.*, p. 16:

"That § 6 effects a revolution in the substantive law of agency. By that section no officer or member of any organization, participating in a labor dispute, and this applies equally to employers, is to be held liable in any court of the United States for the unlawful act of agents acting in such dispute, unless there be clear proof of actual participation, authorization, or ratification of the agents' acts after actual

The reply of the House Committee was that it did "not affect the general law of agency" and was necessary "under the circumstances" so that "the courts should know that Congress expects them not to hold officers or associations liable for the unlawful acts of a member without clear proof of actual participation in, or authorization of, any unlawful acts by the officer or association."⁹ The Senate Committee was of the view that it was a "rule of evidence," not a "new law of agency."

"There is no provision made relieving an individual from responsibility for his acts, but provision is made that a person shall not be held responsible for an 'unlawful act' except upon 'clear proof' of participation or authorization or ratification. Thus a rule of evidence, not a rule of substantive law, is established."¹⁰

We need not determine whether § 6 should be called a rule of evidence or one that changes the substantive law of agency. We hold that its purpose and effect was to relieve organizations, whether of labor or capital," and mem-

knowledge. The general law of agency is thus repealed or restricted to a labor dispute, and it applies equally to employers and employees. It applies to men who by collusion enter into agreements which may harmfully affect the public interests, and which in some instances might be violations of the antitrust act, although they may be the result, or grow out of, or involve terms of a labor dispute."

See also pp. 33 and 39.

⁹ H. Rep. No. 669, 72d Cong., 1st Sess., p. 9.

¹⁰ S. Rep. No. 163, 72d Cong., 1st Sess., p. 19.

¹¹ "Section 6 of the bill relates to damages for unlawful acts arising out of labor disputes. It is provided that officers and members of any labor organization, and officers and members of any employers' organization, shall not be held liable for damages unless it is proven that the defendant either participated in or authorized such unlawful acts, or ratified such unlawful acts after actual knowledge thereof." S. Rep. No. 163, supra, p. 19; 76 Cong. Rec. 4507; 47 Stat. 70, 73:

"Sec. 13. . . .

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it,

bers of those organizations from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of the organization without clear proof that the organization or member charged with responsibility for the offense, actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration.¹²

Thus § 6 limited responsibility for acts of a co-conspirator—a matter of moment to the advocates of the bill.¹³ Before the enactment of § 6, when a conspiracy between labor unions and their members, prohibited under the Sherman Act, was established, a widely publicized case had held both the unions and their members liable for all overt acts of their co-conspirators.¹⁴ This liability resulted whether the members or the unions approved of the acts or not or whether or not the acts were offenses under the criminal law. While of course participants in a conspiracy that is covered by § 6 are not immunized from responsibility for authorized acts in furtherance of such a

and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation."

¹² See the full statement in S. Rep. No. 163, *supra*, pp. 19-21. Nothing has been found to give definition to the word "organization" as used in the act. We see no reason to restrict its meaning to unincorporated entities. Apparently it was employed by the draftsmen to cover, generically, all organizations that take part in labor disputes. See note 11, *supra*. We so apply the word. The corporate form, as is true in this case, is frequently employed for trade groups.

¹³ *The Danbury Hatters Case—Loewe v. Lawlor*, 208 U. S. 274, and *Lawlor v. Loewe*, 235 U. S. 522—involving damages against union members for their union's acts in an unlawful conspiracy, was in their minds. Hearings on S. 1482, *supra*, p. 760, et seq. Compare the partnership in crime theory. *United States v. Kissel*, 218 U. S. 601, 608; *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 253.

¹⁴ *United States v. Railway Employees' Dept. A. F. L.*, 283 Fed. 479, 492.

conspiracy, they now are protected against liability for unauthorized illegal acts of other participants in the conspiracy.

The legislative history makes the intended meaning of the word "authorization," we think, almost equally clear. The rule of liability for acts of an agent within the scope of his authority, based on the *Danbury Hatters Case*, was urged as an argument against the language of § 6.¹⁵ When the Senate Committee on the Judiciary reported the bill, it dealt with this contention.

¹⁵ Hearings on S. 1482, *supra*, p. 760:

"When that came before the Supreme Court of the United States Justice Holmes—I do not remember the exact language, but he had in mind that it might not be necessary to show that they knew or ought to have known or that they ought to have been warranted in their belief—that under the rule of agency as prevailing in all other activities, including bankers' associations, to which you refer, and all other associations, it is the common accepted proposition, as fundamental as any I know in Anglo-Saxon jurisprudence, that a principal may be liable for the acts of his agent, even though he never knew or heard of them and actually forbade them, provided he was acting within the general scope of his authority, in furtherance of the purpose of the association. That is the law laid down by the Supreme Court of the United States, and that is the law that I am afraid is curtailed by this provision in this section 6."

Excerpts from *Laylor v. Loewe*, 235 U. S. at 534-55, will explain the reference: "We agree with the Circuit Court of Appeals that a combination and conspiracy forbidden by the statute were proved, and that the question is narrowed to the responsibility of the defendants for what was done by the sanction and procurement of the societies above named.

"The court in substance instructed the jury that if these members paid their dues and continued to delegate authority to their officers unlawfully to interfere with the plaintiffs' interstate commerce in such circumstances that they knew or ought to have known, and such officers were warranted in the belief that they were acting in the matters within their delegated authority, then such members were jointly liable, and no others. It seems to us that this instruction sufficiently guarded the defendants' rights, and that the defendants got all that they were entitled to ask in not being held chargeable with

"But the argument is made that a man is held legally responsible for the acts of his agents taken in due course of employment. This argument is evidently based upon a doctrine of the civil law of negligence. It has no application to the criminal law. If a man is held responsible for an unlawful act, his responsibility rests on the basis of actual or implied participation. He is responsible for conspiring to do an unlawful act or for setting in motion forces intended to result, or necessarily resulting, in an unlawful act.

... it is high time that, by legislative action, the courts should be required to uphold the long established law that guilt is personal and that men can only be held responsible for the unlawful acts of associates because of participation in, authorization or ratification of such acts. As a rule of evidence, clear proof should be required, so that criminal guilt and criminal responsibility should not be imputed but proven beyond reasonable doubt in order to impose liability."¹⁶

We hold, therefore, that "authorization" as used in § 6 means something different from corporate criminal responsibility for the acts of officers and agents in the course or scope of employment.¹⁷ We are of the opinion that the requirement of "authorization" restricts the

knowledge as matter of law. . . . If the words of the documents on their face and without explanation did not authorize what was done, the evidence of what was done publicly and habitually showed their meaning and how they were interpreted. The jury could not but find that by the usage of the unions the acts complained of were authorized, and authorized without regard to their interference with commerce among the States."

¹⁶ S. Rep. No. 163, *supra*, p. 20.

¹⁷ See *New York Central R. Co. v. United States*, 212 U. S. 481, 494.

These cases now being passed upon have not involved the liability of an employer, whether a member or not of an association or organization of employers, for the acts, in a labor dispute, of his or its own officers. We express no opinion upon that.

responsibility or liability in labor disputes of employer or employee associations, organizations or their members for unlawful acts of the officers or members of those associations or organizations, although such officers or members are acting within the scope of their general authority as such officers or members, to those associations, organizations or their officers or members who actually participate in the unlawful acts, except upon clear proof that the particular act charged, or acts generally of that type and quality, had been expressly authorized, or necessarily followed from a granted authority, by the association or non-participating member sought to be charged or was subsequently ratified by such association, organization or member after actual knowledge of its occurrence.

In this prosecution the United Brotherhood of Carpenters and Joiners and all the local unions who were convicted requested an instruction or instructions that embodied the above interpretation of § 6.¹⁸ A similar request was made by the individual members by requested instruction No. 58. These requested instructions were refused and instead instructions were given that stated a different concept of law as is evidenced by the excerpts in the marginal note.¹⁹

So far as the Unions, both local and national, are concerned, the necessity under our construction for an

¹⁸ A fair example, requested instruction No. 56, is as follows:

"You are instructed that no labor union or organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof."

¹⁹ "The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation.

"If you find that there did exist a combination and conspiracy such as is charged in the indictment, and that any defendant corporation participated therein, then I instruct you that such act of

instruction based on § 6 is apparent. The United Brotherhood was not a party to any of the agreements. Local unions took a more definitive part than the United Brotherhood. In some instances the name of a local Union was signed to the agreement that contained the restrictive clause. Necessarily acts performed by or for the unions were done by their individual officers, members or agents. We do not enter into an analysis of the evidence that was relied upon to show the participation of the unions in the conspiracy. The evidence in any new trial may be quite different. No matter how strong the evidence may be of an association's or organization's participation through its agents in the conspiracy, there must be a charge to the jury setting out correctly the limited liability under § 6 of such association or organization for acts of its agents.²⁰ For a judge may not direct a verdict of guilty no matter how conclusive the

participation is deemed to be also the act of the individual director, officer or agent of such defendant corporation who authorized, ordered or did such act in whole or in part.

"Likewise, the list of defendants includes a number of labor union organizations and several members thereof. It has been stipulated in this case that these labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that act, separately and apart from the guilt or innocence of their members.

"You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents.

"In this case, several individuals are named as defendants, together with a number of corporations. While these defendants have been jointly indicted and charged with the offenses contained in the indictment, each defendant is entitled to an independent consideration by you of the evidence as it relates to his conscious participation in the alleged unlawful acts, and it is your duty to determine the guilt or innocence of each individual separately."

²⁰ See *Battle v. United States*, 209 U. S. 36, 38.

evidence.²¹ There is no way of knowing here whether the jury's verdict was based on facts within the condemned instructions, note 19 above, or on actual authorization or ratification of such acts, note 18.²² A failure to charge correctly is not harmless, since the verdict might have resulted from the incorrect instruction. We are of the opinion, therefore, that the judge should have instructed the jury as to the limitations upon the association's liability for the acts of its agents under § 6. The error is aggravated by the failure to give the correct charge upon request.

The suggestion is made that the alert and powerful unions and corporations gain the greatest degree of immunity under our interpretation of § 6. That is not the case. Section 6 draws no distinction as to liability for unauthorized acts between the large and the small, between national unions and local unions, between powerful unions and weak unions, between associations or organizations and their members. And we draw no such distinctions.

There is no implication in what we have said that an association or organization in circumstances covered by § 6 must give explicit authority to its officers or agents to violate in a labor controversy the Sherman Act or any other law or to give antecedent approval to any act that its officers may do. Certainly an association or organization cannot escape responsibility by standing orders disavowing authority on the part of its officers to make any agreements in violation of the Sherman Act and disclaiming union responsibility for such agreements. Facile arrange-

²¹ *Sparf and Hansen v. United States*, 156 U.S. 51, 105, dissent 173. Compare *Capital Traction Company v. Hof*, 174 U.S. 1, 13.

²² *Bird v. United States*, 180 U.S. 356, 361: "The chief object contemplated in the charge of the judge is to explain the law of the case, to point out the essentials to be proved on the one side and the other, and to bring into view the relations of the particular evidence adduced to the particular issues involved." See *Pierce v. United States*, 314 U.S. 306.

ments do not create immunity from the act, whether they are made by employee or by employer groups. The conditions of liability under § 6 are the same in the case of each. The grant of authority to an officer of a union to negotiate agreements with employers regarding hours, wages, and working conditions may well be sufficient to make the union liable. An illustrative but nonrestrictive example might be where there was knowing participation by the union in the operation of the illegal agreement after its execution. And the custom or traditional practice of a particular union can also be a source of actual authorization of an officer to act for and bind the union.

Our only point is this: Congress in § 6 has specified the standards by which the liability of employee and employer groups is to be determined. No matter how clear the evidence, they are entitled to have the jury instructed in accordance with the standards which Congress has prescribed. To repeat, guilt is determined by the jury, not the court. The problem is not materially different from one where the evidence against an accused charged with a crime is well nigh conclusive and the court fails to give the reasonable doubt instruction. It could not be said that the failure was harmless error.²³

It is suggested that since "conscious participation" was required for conviction by the instructions given, error as to the individual defendants cannot be found under any theory of the rule of § 6. But we think that failure to instruct the jury on the imputation of guilt from the acts of others as limited in labor disputes by § 6 affects the individuals as well as the associations. The section covers organizations and their members alike. Individuals, without association authority, may be guilty of such a conspiracy as this under the Sherman Act, but under § 6 they will not be guilty merely because they are members or officers of a guilty association. Nor are individuals guilty

²³ *Weiler v. United States*, 323 U. S. 606; *Bruno v. United States*, 308 U. S. 287.

because of acts of other individuals in which they did not participate, or which they did not authorize or ratify. Although an illegal conspiracy under the Sherman Act was proven at the trial, the individuals are entitled to have their participation weighed by a jury under an instruction explaining the circumstances under which § 6 permits acts of other individuals or of associations or of organizations in labor disputes to create personal liability. To instruct only that conscious participation of the individual is required leaves a jury free to weigh an individual's guilt in the light of unauthorized and unratified acts of others with whom he is associated but in whose acts he has not participated. As the evidence of any individual's activities in the alleged conspiracy is a minor part of the evidence as to the entire scheme, this delimitation of his responsibility is important.

Certiorari was granted to two employer groups, Nos. 8 and 10, each containing an incorporated trade association and its officers and members, both individual and corporate. Both groups combatted the indictment by demurrer on the ground that, as the restrictive agreement was directed at the maintenance of proper working conditions, it did not state a crime under the Sherman Act. The demurrer was overruled by the trial court. Our decision in *Allen Bradley Company* requires us to uphold this conclusion. Thereafter pleas of *nolo contendere* were entered by each defendant in the employer petitioner groups.

Each of the employer petitioners, if they had stood trial, as we have indicated hereinbefore, would have been entitled to the same instruction under § 6 as we have held the union group should have received. And though the failure so to charge was not excepted to, we would not be precluded from entertaining the objection.²⁴ The erroneous charge was on a vital phase of the case and affected

²⁴ *Wiborg v. United States*, 163 U. S. 632, 658; *Brasfield v. United States*, 272 U. S. 448, 450; see also *United States v. Atkinson*, 297 U. S. 157, 160. And see Rules of the Supreme Court, Rule 27.

the substantial rights of the defendants. We have the power to notice a "plain error" though it is not assigned or specified.²⁵ In view of their plea of *nolo contendere*, does justice require that these employer groups should now be given an opportunity to stand trial in the situation created by our subsequent rulings in the Allen Bradley case and in this case? We think that it does.

This present decision furnishes a guide for the application of § 6 to liability for acts of agents in labor disputes. Ordinarily a plea of *nolo contendere* leaves open for review only the sufficiency of an indictment.²⁶ However, in view of the then existing uncertainty as to liability for contracts between groups of employers and groups of employees that restrained interstate commerce and the application of § 6 of the Norris-LaGuardia, we conclude that in this exceptional situation the employer groups, also, should have an opportunity to make defense to the indictment.²⁷

The judgments in each case are reversed and the causes remanded to the District Court.

MR. JUSTICE JACKSON took no part in the consideration or decision of this case.

²⁵ *Weems v. United States*, 217 U. S. 349, 362; *Mahler v. Eby*, 264 U. S. 32, 45; *Sibbach v. Wilson & Co.*, 312 U. S. 1, 16; see also *Kessler v. Strecker*, 307 U. S. 22, 34. And see Rules of Criminal Procedure, Rule 52 (b).

²⁶ *Nolo contendere* "is an admission of guilt for the purposes of the case." *Hudson v. United States*, 272 U. S. 451, 455; *United States v. Norris*, 281 U. S. 619, 622. And like pleas of guilty may be reviewed to determine whether a crime is stated by the indictment. *Hocking Valley R. Co. v. United States*, 210 Fed. 735, 738; *Tucker v. United States*, 196 Fed. 260, 262.

²⁷ See *Hasty v. United States*, 282 U. S. 694, 703; *Ashcraft v. Tennessee*, 322 U. S. 143, 155-56; *R. F. C. v. Prudence Group*, 311 U. S. 579, 582; *Watts, Watts & Co. v. Unione Austriaca*, 248 U. S. 9, 21; *Montgomery Ward & Co. v. Duncan*, 311 U. S. 243, 254.

SUPREME COURT OF THE UNITED STATES

Nos. 6, 7, 8, 9 AND 10.—OCTOBER TERM, 1946.

United Brotherhood of Carpenters and
Joiners of America, Petitioner,

6

v.

The United States of America.

The Bay Counties District Council of
Carpenters of the United Brother-
hood of Carpenters and Joiners of
America, et al., Petitioners,

7

v.

The United States of America.

Lumber Products Association, Inc.,
Acme Manufacturing Co., Inc., Eu-
reka Sash, Door & Moulding Mills,
et al., Petitioners,

8

v.

The United States of America.

Alameda County Building and Con-
struction Trades Council, Petitioner.

9

v.

The United States of America.

Boorman Lumber Company, Hogan
Lumber Company, Loop Lumber &
Mill Company, et al., Petitioners,

10

v.

The United States of America.

On Writs of Cer-
tiorari to the
United States
Circuit Court
of Appeals for
the Ninth Cir-
cuit.

[March 10, 1947.]

MR. JUSTICE FRANKFURTER, with whom THE CHIEF
JUSTICE and MR. JUSTICE BURTON concur in result,
dissenting.

The issue in this case is clear and simple. It is this.
When officers make an arrangement on behalf of their
organization, whether a corporation or a union, while act-

ing in the regular course of business and within their general authority as such officers, is the organization liable for what these officers did if the court should subsequently find that such an arrangement is prohibited by the Sherman Law? The issue is clear and it is susceptible of a clear answer. Neither the issue nor the answer should be obscured. Either the organization is subject to the liability that the law in other respects imposes upon organizations for the acts of their agents, or the Norris-LaGuardia Act freed unions and corporations from such liability. The lower courts must apply the law as laid down by this Court and we owe them clarity of pronouncement. They cannot very well guide juries, or even themselves in equity suits, if told that the principles of the law of agency do not apply to unions and corporations under the Sherman Law, but that perhaps they "can" apply. What the Court means to decide ought to be brought out of the twilight of ambiguity. It does not advance the administration of justice to impart new doubts to an old statute. And the Sherman Law is not merely old. It embodies, as this Court has often indicated, a vital policy.

By explicit language Congress forbade "corporations and associations" no less than individuals to engage in combinations and conspiracies in restraint of interstate trade. Section 8 of the Sherman Law. And it has long been settled that trade unions are "associations" under the Sherman Law. *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344. Before the *Coronado* decision and since, repeated efforts were made to have Congress take trade unions from under the Sherman Law. Regardless of the political complexion of Congresses, these efforts have consistently failed. Equally futile have been efforts to have this Court read the liability of trade unions out of the Sherman Law by judicial construction. This Court has undeviatingly held that trade unions are within "the general interdict of the Sherman Law", although

later enactments have withdrawn "specifically enumerated practices of labor unions" from the scope of that law. See § 20 of the Clayton Act, 38 Stat. 730, 738, 29 U. S. C. § 52; *United States v. Hutcheson*, 312 U. S. 219, 230, and *Aper Hosiery Co. v. Leader*, 210 U. S. 469, 487-88. In the light of this history it would be strange indeed to find that Congress, by hitherto unsuspected indirection, had, from the point of view of effectiveness, sterilized the Sherman Law as to trade unions and particularly as to those which alone could to any serious extent unreasonably restrain commerce. It is a conclusion which can be reached only by disregarding the circumstances to which § 6 of the Norris-LaGuardia Act was addressed, and by wrenching it from the context of history in which it must be read.¹

The construction given by the Court to § 6 is based on considerations which move in a world of unreality. The argument is quite unmindful of the way in which trade unions function—their organization, the authority of their international officers, the inevitable influence of the international office upon the affiliated locals. In short, such a construction is unmindful of the anatomy and physiology of trade union life. It is especially the powerful international unions who are in strategic positions to impose unreasonable restraints on commerce, and it is these that are especially rendered immune by the construction the Court gives to § 6. It is such unions that can most readily be insulated from responsibility

¹"Sec. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof." 47 Stat. 70, 71, 29 U. S. C. § 106.

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for the acts of their leading officers, although such action be taken in furtherance of the vital concerns of the union and in every other aspect of legal responsibility be deemed within the direct authority of these officers and binding on the union.

It took some time for the law to catch up with reality and to hold that when men aggregated to form an entity, the entity as such acquires power and may therefore be held to responsibility in exerting its power. But it can act only through individuals. Its power is exerted, and its responsibility accrues, through the conduct of individual men entrusted with the power of the entity to achieve its purposes. This conclusion, supported alike by morality and by reason, the early law escaped through empty subtleties that seem fanciful to the modern reader. Arguments not unlike them underlie a reading of § 6 whereby the Sherman Law will be sterilized, certainly so far as national labor unions are concerned. The Court's opinion, to be sure, does not say in words that a national union is not liable under the Sherman Law for acts by its chief officers undertaken in the course of duty and for the furtherance of the union's purposes. But the conditions formulated by the Court, which must now be met before a union may be held to liability, are practically unrealizable, whether in the case of a big or a small union, a local or an international. Escape from responsibility can be easily contrived. It will be difficult to charge a union with culpability unless a convention of its membership, held perhaps every two years or even four, should knowingly authorize or approve a violation of the Sherman Law, or give *carte blanche* to the officers of the union by approving in advance whatever they may do, no matter what the legal significance. For instance, if the president of an international union should negotiate an agreement with employers regarding hours and wages and working conditions, his union will not be responsible for the agreement,

under the rule now laid down by the Court, if it should turn out to run counter to the Sherman Law, although making agreements to promote the economic betterment of its membership is the aim of the union and the job of its president.

The case before us illustrates how an association like the Brotherhood pursues its objectives. The Locals took no action until the General Office of the Brotherhood offered its approval; the President of the Brotherhood himself took an active part in the contract negotiations; a representative of the Brotherhood was present at the time that the contracts were made; no union agreement was forthcoming until the General Office approved the contracts in the routine way for such approval—collective agreements are not ordinarily subject to approval at the quadrennial convention of the Brotherhood; a circular issued by the General Office requested adherence to the contracts by the members of the local. Surely here was active "participation" by the Brotherhood in what has been found to be an outlawed combination, in the normal way in which such a union exerts its authority and "participates" in agreements. On such evidence did the jury find the Brotherhood guilty.

The Court finds that there was error in not giving a requested charge which was in the language of the statute. A trial court does not discharge its duty merely by quoting a statute relevant to the conduct of the trial. The issue before an appellate court is not whether the trial judge might have given a request of abstract correctness, or even charged differently, but whether the judge's instructions were accurate and ample. It might have been wise for the judge to emphasize the counsel of care embodied in § 6. But the failure to do so or to use the statutory formula is not the Court's basis for upsetting the convictions. The Court upsets the convictions because it deems erroneous the view which the trial court took of § 6. The holding

is that the view which the trial court should have taken, which all trial courts will have to take hereafter, and which, whatever the language used in the charge, must control a jury's findings from the evidence, is the elucidation which the Court now gives to § 6. For practical purposes, this elucidation immunizes unions and corporate offenders for acts which their agents perform because they are agents and, as such, endowed with authority. For practical purposes, a union or a corporation could not be convicted on any evidence likely to exist, if the trial court has to charge what the Court now holds to be required by § 6.

The trial court repeatedly warned the jury that to find guilt they must be satisfied beyond a reasonable doubt. It instructed the jury that the guilt or innocence of labor unions should be determined in the same manner as that of corporations. On the question of authorization, it charged that "The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation." That statement correctly expresses the standard of guilt of corporations and unions under all other criminal statutes. If it is not the standard for violations of the Sherman Law it is only because the Court now reads in § 6 an exception to the whole of the criminal law. Presumably trial courts will conscientiously apply the intendment of the opinion of the Court. That means that they will have to charge juries that the rules of agency do not apply in Sherman Law cases—there must be more to hold the union for the acts of its officers. And "more" will not be found in view of the practical workings of unions, reinforced by the safeguards they will naturally take on the basis of this decision.

Aside from the actualities of trade union practice, the terms of § 6, read in the light of its legislative history and

its purpose, repel the result reached by the Court once "we free our minds from the notion that criminal statutes must be construed by some artificial . . . rule." *United States v. Union Supply Co.*, 215 U. S. 50, 55. To assure immunity to powerful unions collaborating with employers' associations in disregard of the Sherman Law, was not the purpose of § 6, and the provision should not be so read. This minor provision of the Norris-LaGuardia Act was directed against decisions by some of the federal courts in litigation involving industrial controversies. The abuse was misapplication of the law of agency so that labor unions were held responsible for the conduct of individuals in whom was lodged no authority to wield the power of the union. By undue extension of the doctrine of conspiracy, whereby the act of each conspirator is chargeable to all, unions were on occasion held responsible for isolated acts of individuals, believed in some instances to have been *agents provocateurs* who held a spurious membership in the union during a strike. Congress merely aimed to curb such an abusive misapplication of the principle of agency. It did not mean to change the whole legal basis of collective responsibility. By talking about "actual authorization," Congress merely meant to emphasize that persons for whose acts a corporation or a union is to be held responsible should really be wielding authority for such corporation or union.

The Congressional purpose behind § 6, then, is clear.² All that Congress sought to do was to eliminate an extraneous doctrine that had crept into some of the decisions, whereby organizations were held responsible not for acts of agents who had authority to act, but for every act com-

² See the statement of Senator Blaine, a Committee spokesman: "I have this memorandum which I can refer to which gives the purpose of this section 6. This is merely the application of the sound principles of the law of agency to labor cases. It has become necessary because the Federal courts in many cases have held the union

mitted by any member of the union merely because he was a member, or because he had some relation to the union although not authorized by virtue of his position to act for the union in what he did. And so Congress charged the federal courts with the duty to look sharply to the relation of the individual to the affairs of the organization, and not to confound individual with union unless the individual is clothed with power by the union, in the ordinary way of union operation, in doing what he does for the union. A basis for liability which has entered into the warp and woof of our law, as is true of the responsibility of collective bodies for the acts of their agents, should not be

or members not connected with the unlawful acts responsible for those acts although proof of actual authorization or ratification is wholly lacking.

Now, that is the law of agency, and we want to apply that. We want to apply that for this reason, that if it is unjust to hold all members of the union responsible for the acts of its officers and their members merely because of such membership, similarly it is unjust to hold the officers responsible during the strike merely because they pass on questions of this kind, that an attempt is here made to recognize the rules of law of agency in labor cases." See Hearings before Subcommittee of Senate Committee on Judiciary, S. 1482, 70th Cong., 2d Sess., p. 763.

The Senate Committee reported this: "There has been a distinct conflict of opinion in the courts as to the degree of proof required. Mere ex parte affidavits establishing a certain amount of lawless conduct in the prosecution of a strike have been held in some instances to establish a 'presumption' that the entire union and its officers were engaged in an unlawful conspiracy; and, on the other hand, other courts have declined thus to substitute inference for proof, rejecting such a doctrine in language such as the following used in a New York case: 'Is it the law that a presumption of guilt attaches to a labor union association?' Various examples of these different rulings are quoted in *The Labor Injunction*, by Frankfurter and Greene, pp. 74-75.

"It is appropriate and necessary to define by legislation the proper rule of evidence to be followed in this matter in federal courts. That is the only object of section 6." S. Rep. No. 163, 72d Cong., 1st Sess. (1932) pp. 20-21.

deemed to have been uprooted by an enactment which merely emphasizes that basis and rules out its distortions. 1932 was too late in the day for Congress not to have known that unions, like other organizations, act only through officers, and that unions do not, any more than do other organizations, explicitly instruct their officers to violate the Sherman Law. Neither by inadvertence nor on purpose did Congress remove the legal liability of organizations for the conduct of officials who, within the limits of their authority, wield the power of those organizations. It is not lightly to be assumed that Congress would thus turn back the clock of legal history a hundred years and disregard the practicalities of collective action by powerful organizations.

Nor are the debilitating implications for Sherman Law enforcement of the construction now placed on § 6 limited to their bearing on union activities. Congress did not lay down one rule of liability for corporations and another for unions. On the contrary, it subjected both groups of organizations to the same basis and measure of liability. Both can act only through responsible agents and both are responsible as organizations only through the acts of such agents. See § 13 (b) of the Norris-LaGuardia Act.³ If the liability of a union does not flow from the acts of responsible officers acting in the due course of their authority in the pursuit of union purposes, then a corporation "interested in a labor dispute" cannot be held liable for the acts of its responsible officers acting within their customary

³ "SEC. 13. When used in this Act, and for the purposes of this Act—

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation." 47 Stat. 70, 73, 29 U. S. C. § 113 (b).

authority in pursuit of corporate purposes. Violations of the Sherman Law by corporate officers acting on behalf of the corporation and pursuing its economic interest are not usually explicitly authorized by a formal vote of the Board of Directors or by the stockholders in annual meeting assembled.

The teaching of the present case can hardly fail. To come under the Court's indulgent rule of immunity from liability for the acts of its officers, unions will not rest on a lack of affirmative authorization. To make assurance doubly sure they will, doubtless in good conscience, have standing orders disavowing authority on the part of their officers to make any agreements which may be found to be in violation of the Sherman Law. So also, corporations "interested in a labor dispute", as, for instance, by combining to resist what they deem unreasonable labor demands, will, by the formality of a resolution at a directors' meeting, disavow and disapprove any arrangements made by their officers which run afoul of the Sherman Law. This may achieve immunity even though the officers are moving within the orbit of their normal authority and are acting solely in the interests of their corporation.

Words are symbols of meaning. In construing § 6, as in construing other enactments of Congress, meaning must be extracted from words as they are used in relation to their setting, with due regard to the evil which the legislation was designed to cure as well as to the mischievous and startling consequences of one construction as against another. "Doubt, if there can be any, is not likely to survive a consideration of the mischiefs certain to be engendered The mind rebels against the notion that Congress . . . was willing to foster an opportunity for juggling so facile and so obvious." Cardozo, J., in *Woolford Realty Co. v. Rose*, 286 U. S. 319, 329-30.

Practically speaking, the interpretation given by the Court to § 6 serves to immunize unions, especially the more

alert and powerful, as well as corporations involved in labor disputes, from Sherman Law liability. To insist that such is not the result intended by the Court is to deny the practical consequences of the Court's ruling. For those entrusted with the enforcement of the Sherman Law there may be found in the opinion words of promise to the ear, but the decision breaks the promise to the hope.

In our view the judgments below should be affirmed.

4

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6-10
Nos. 9, 10, 11, 12, 13

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In the Supreme Court of the United States

OCTOBER TERM, 1945

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, PETITIONER

v.

UNITED STATES OF AMERICA

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS,
ETC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

LUMBER PRODUCTS ASSOCIATION, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES
COUNCIL, PETITIONER

v.

UNITED STATES OF AMERICA

BOORMAN LUMBER COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

BRIEF FOR THE UNITED STATES ON REARGUMENT

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 9

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, PETITIONER

v.

UNITED STATES OF AMERICA

No. 10

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS, ETC.; ET AL., PETITIONERS

v. •

UNITED STATES OF AMERICA

No. 11

LUMBER PRODUCTS ASSOCIATION, INC., ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

(1)

No. 12

ALAMEDA COUNTY BUILDING AND CONSTRUCTION
TRADES COUNCIL, PETITIONER

v.

UNITED STATES OF AMERICA

No. 13

BOORMAN LUMBER COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

BRIEF FOR THE UNITED STATES ON REARGUMENT

The Court has asked the parties to discuss the following points:

(1) The scope of Section 6 of the Norris-La-Guardia Act in relation to prosecutions under the Antitrust Act.

(2) The scope of Section 6 in relation to Section 13 (b).

(3) The scope of the words "association" or "organization" appearing in Section 6, in that Section's relationship to Section 13 (b).

(4) Consideration of the Court's oral charge and written charges requested and refused involving Section 6, in the light of objections and exceptions by each and all of the defendants and the state of the evidence on that issue as to each of them.

The pertinent provisions of the Norris-La-Guardia Act are set forth in the Appendix, *infra*, pp. ~~57-58~~. 58-59

In Point I of this brief we shall discuss the three questions asked by the Court with respect to the general scope of the pertinent provisions of the Norris-LaGuardia Act. In Point II we shall deal with the Court's fourth question and apply the principles discussed in Point I to the charge and the evidence in this case.

We wish to point out in advance, however, that the questions raised by the Court concern only the liability of the labor petitioners. The employer groups either pleaded *nolo* and did not stand trial, thus being in a position only to challenge the validity of the indictment on their appeals, or did not appeal.¹ Furthermore, the portion of the charge most seriously attacked does not relate to the guilt of the individual labor defendants, all of whom individually actively participated in the conspiracy and who were not held liable on any theory of agency (see pp. 43-45, *infra*).

I

THE MEANING OF THE NORRIS-LA GUARDIA ACT

In discussing the first three of the above questions we shall take the liberty of departing from

¹ The employer petitioners in No. 11 have conceded in their brief on reargument (p. 1) that the questions which the Court requested the parties to discuss "appear to pertain to the parties in Cases 9, 10 and 12, and not to the issues in this case."

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the order in which they have been stated, so that issues preliminary in nature may be disposed of first.

A.

Applicability of the Norris-LaGuardia Act to Sherman Act cases

We do not believe that there can be any doubt that the Norris-LaGuardia Act applies to Sherman Act cases. This would appear not only from its terms, but from the fact that it was designed in large part to overcome decisions against labor rendered under the Sherman Act. See *United States v. Hutcheson*, 312 U. S. 219.

B.

Does Section 6 apply to criminal cases?

Section 6 is not limited in terms to suits for injunctions. It declares that the persons specified shall not "be held responsible or liable in any court of the United States for the unlawful acts" of officers, members, or agents. The quoted phrase would seem to include criminal as well as civil liability, although, as we shall show, Congress was mainly concerned with protecting unions and their officials against civil actions for damages. See pp. 14-16, *infra*. In any event, the test of liability prescribed in Section 6 is, we believe, the rule properly applicable in criminal cases apart from the Norris-LaGuardia Act, so that the applicability of the statute is immaterial.

*Whether this case involves a labor dispute within
the meaning of Section 6*

(1) In *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, this Court held that a combination of unions with non-labor groups with a purpose to eliminate competition among or with the latter was "a situation * * * not included within the exemptions of the Clayton and the Norris-LaGuardia Acts" (p. 809). The Court also stated (p. 807, n. 12) that the argument that "no labor disputes existed * * * is untenable". In the light of these statements, we read the opinion as a whole as holding that although the definition of "labor dispute" in Section 13 (c) of the Norris-LaGuardia Act may cover a situation in which there is a combination between labor and non-labor groups, the substantive limitations of the Act do not apply to such a combination or the conduct of the labor groups to the extent that they participate in such a combination. But whatever the analysis, we submit that the reasoning which made the Norris-LaGuardia Act insufficient to validate the acts of the combination in the *Allen Bradley* case applies in the instant case as well.

(2) In this case there was unquestionably originally a labor dispute between the employer and employee groups. The Government was not

a party to that dispute. The question may be raised as to whether in this circumstance the Act reaches the prosecution brought by the Government.

That suits by the Government are not exempt from the Act is clear from its history. Among the instances of the abuse of the injunctive process which Congress had in mind was the injunction obtained by Attorney General Daugherty from Judge Wilkerson in the shopmen's strike in 1922.² And in *United States v. Hutcheson*, 312 U. S. 219, 227, the Court stated that "Concededly an injunction either at the suit of the Government or of the employer could not issue".

Although other sections of the Act are limited in their effect to suits for injunctions this is not true as to Section 6, as we have seen. Accordingly, in that respect it is easier to hold Section 6 applicable to criminal cases. But Section 6 differs from the sections dealing with injunctions (principally Sections 4 and 7) in that the latter apply to "cases involving or growing out of any labor dispute", whereas Section 6 in terms applies to an "association or organization participating or interested in a labor dispute." The question

² *United States v. Railway Employees' Dept., American Federation of Labor*, 286 Fed. 228 (N. D. Ill.). S. Rep. 163, 72d Cong., 1st sess., p. 8; 75 Cong. Rec. 4693; see Frankfurter and Greene, *The Labor Injunction* (1930) pp. 103, 108, 115, 174, 218, 253.

may arise as to whether the dispute covered by Section 6, which does not in terms apply to cases merely involving or growing out of labor disputes, must be between the parties to the law suit.

A "labor dispute" is defined in Section 13 (c) as including "any controversy concerning terms or conditions of employment * * * regardless of whether or not the disputants stand in the proximate relationship of employer and employee." The last clause was intended to overcome the decisions of this Court involving secondary boycotts.³ But it seems to assume that the case will be between "disputants" to the labor dispute, and the United States is not within that category.

It is also arguable that the words "participating or interested in" Section 6 show that that Section only applies to cases between the adverse parties to a labor dispute. This is a narrower phrase than "involving or growing out of". The Section could not have been intended to apply to all persons or associations "interested in a labor dispute" where the case has nothing whatsoever to do with the dispute.⁴

We are disinclined to press the arguments which could be based upon these verbal distinctions, in-

³ *Duplex Printing Press Co. v. Deering*, 254 U. S. 443; *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Assoc.*, 274 U. S. 37.

⁴ E. g. Persons participating in a labor dispute might be parties to an automobile accident or a will case.

asmuch as we do not think they are consistent with the over-all intention of Congress. If the Section is read in the context of the remainder of the Act and its history, we think that it was intended to reach cases growing out of labor disputes of the type subject to the remainder of the statute. Furthermore, inasmuch as the rule prescribed by Section 6 is in substance the proper criterion, we do not think that the question of its applicability is too significant.

D

Whether Section 6 of the Norris-LaGuardia Act applies to associations of employers as well as of employees

We interpret the Court's third question as to the scope of the words "association" or "organization" in Section 6 of the Norris-LaGuardia Act as directed to whether that Section applies to associations of employers as well as to associations of employees. We have never suggested that these expressions do not apply to the petitioning labor unions.

Section 6 applies to any association or organization participating or interested in a labor dispute." The quoted phrase is defined in Section 13 (b). The last portion of the definition includes a person who "is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry,

trade, craft, or occupation." The inclusion of the word "employer" would seem clearly to indicate that associations of employers were meant to be covered by Section 6.

The legislative history of the Section makes this plain. The Senate Committee Report (S. Rep. No. 163, 72d Cong., 1st Sess., p. 19) stated:

* * * it will be observed that this section, as do most all of the other prohibitive sections of the bill, applies both to organizations of labor and organizations of capital. The same rule throughout the bill, wherever it is applicable, applies both to employers and employees, and also to organizations of employers and employees.

An identical statement was made by Senator Norris in explaining the bill on the floor of the Senate. 75 Cong. Rec. 4507. There was also discussion in the Senate as to the extent to which the bill would prevent employees from bringing injunction suits against employers; it seems to have been assumed in this discussion that the Act would reach such suits, although it was not anticipated that many would be brought. 75 Cong. Rec. 4777-4778, 4936-4938. On the floor of the House, Representative O'Connor, who presented the committee report, stated that (75 Cong. Rec. 5463):

* * * Section 6, which, like the other section of the bill, applies alike to organizations of employees as well as employers * * *

Although Congress obviously was not attempting to protect employers, we are forced to the conclusion that the Act applies to suits against them as well as to suits against employees. We think that this may be of some significance in determining whether and to what extent Congress intended Section 6 to change pre-existing agency principles. For since there was no desire to afford employers any greater protection than they had enjoyed theretofore, the application of the Act to them supports the inference that it was intended to raise the employees' rights to the level of the general doctrines of agency rather than to give employers and employees greater freedom from liability. See pp. 17-25, *infra*.

For reasons previously noted (p. 3, *supra*), the applicability of the Act to employers is otherwise of no consequence in this case.

E

The scope of the rule prescribed in Section 6

For the reasons stated above we shall assume that Section 6 applies to this case. The question still remains as to what that Section means.

In particular, the issue relates to the phrase "actual authorization." Does this mean that there must be express authority to do a particular act, or are acts reasonably regarded as within, or implied from, a general grant of authority also included whether or not expressly authorized?

The latter test is, of course, no different from the ordinary agency doctrine that a principal is liable for an agent's acts "within the scope of his authority", although it would not include liability for acts done within the agent's "apparent authority". We think that the history of the Act shows no intention to require an express authorization for each individual act. "Actual authorization" in our view comprehends conduct of a sort which a labor organization would assume its officers would undertake from the general authority granted them.

The statutory requirement as to "clear proof as to authority" may be said to impose a new requirement, at least in civil cases, since that phrase seems to demand more than merely proof by a preponderance of the evidence. But "clear proof" does not seem to be as stringent a test as the orthodox criminal requirement that proof be "beyond a reasonable doubt". Thus the clear proof test would not increase the burden in criminal cases irrespective of its effect in civil cases.

1. *The evil sought to be remedied by Section 6 was the imposition of liability upon unions and union officials for the unauthorized acts of violence of individual members on the basis of the doctrines of conspiracy law*

The evil at which Section 6 was directed was not the type of situation involved in this case.

Congress was not concerned with exculpating labor unions from liability for contracts made or approved on their behalf by their appropriate officials, but with the protection of the unions, and their officers and members, against liability in damages for the "violent deeds" of individual members or strikers, frequently instigated by company spies, even when such conduct was contrary to the instructions of the union officials and expressly disavowed. That the Section was concerned solely with the problem of liability for individual acts of violence in strikes is apparent from its legislative history. The pertinent excerpts from the Senate Committee Report (S. Rep. 163, 72d Cong., 2d sess., pp. 19-20) tell the story:

* * * It has often occurred that employers themselves have secured the services of detectives who, under the guise of labor men, have gained admission into labor unions. When this happens these detectives are usually doing everything within their power to incite employees who are on strike to commit acts of violence, and such detectives, contrary to the definite instructions of labor union leaders, sometimes commit unlawful acts for the express and only purpose of laying the foundation for injunctive process, of bringing discredit upon the union, and of making its officers and members liable for damages.

In case of a strike, where the officers of the labor union are doing everything within

their power to prevent acts of violence from being committed by any person, the law should fully protect them and save them and the members of their organization who are following their advice from liability in damages because of unlawful acts of persons who are either directly or indirectly connected with those who are trying to defeat the purposes of the strike.

* * * * *

According to the same reasoning, why should an officer of a labor union, who has specifically advised members that violence must be avoided, become responsible for the hot-headed action of some member in perhaps assaulting a strike breaker? * * *

The same theme frequently recurred in the debate in the Senate. Senator Walsh of Montana stated that (75 Cong. Rec. 4773-4774):

* * * This provision of the bill is intended to protect the officers of a labor union from responding in damages for injuries to personal property done by some of the strikers, notwithstanding they had absolutely nothing to do with it and cautioned everybody to avoid anything of that character.

The principal officers of these national organizations, some of whom have accumulated some property in the course of their experience, are under the constant apprehension of having all of their property swept away by a judgment against them

from any liability as conspirators. The meaning of Section 6 was extensively discussed during the hearings held before a Senate subcommittee in 1928 on a predecessor to the Norris-LaGuardia Act. See Hearings before Subcommittee of Senate Committee on Judiciary, S. 1482, 70th Cong., 2d sess, pp. 759-763. In reply to the criticism of Mr. Walter Gordon Merritt that Section 6 was enacting a special rule of agency for a special class, Senator Blaine, one of the sponsors of the bill, declared (p. 760):

Senator BLAINE (*interposing*). I might state, Mr. Merritt, the intention was to apply the law of agency as it applies in other cases to labor unions. If we have not done it, I would like to know what we can do to do that.

Mr. MERRITT. Is there any case in existence where any labor union has been held responsible where the ordinary rule of agency has not been applied?

Senator BLAINE. I do not think they apply the rule of agency at all, Mr. Merritt.

* * * In the Loewe case they applied a special rule as the law of agency. It was not the law of agency at all. It was a law applied to that industrial dispute that was far beyond and far outside of the ordinary law of agency. * * * Now that is what we want to prevent, and we want to apply the general rule of agency that applies to all other organizations.

Subsequently, Mr. Merritt and Senator Blaine engaged in the following colloquy, (pp. 762-763):

Mr. MERRITT. Then I understand that so far as section 6 is concerned the purpose is not to alter or modify the law of agency. Is that correct?

Senator BLAINE. It is to apply the law of agency.

Mr. MERRITT. It is not to modify it?

Senator BLAINE. I think it is to apply it.

* * * * *

Senator BLAINE. I have this memorandum which I can refer to which gives the purpose of this section 6. This is merely the application of the sound principles of the law of agency to labor cases. It has become necessary because the Federal courts in many cases have held the union or members not connected with the unlawful acts responsible for those acts although proof of actual authorization or ratification is wholly lacking.

Now, that is the law of agency, and we want to apply that. We want to apply that for this reason, that if it is unjust to hold all members of the union responsible for the acts of its officers and their members merely because of such membership, similarly it is unjust to hold the officers responsible during the strike merely because they pass on questions of this kind, that an attempt is here made to recognize the rules of law of agency in labor cases.

for damages by reason of some injury done by some one who participated in a strike.

Senator Walsh further stated (*id.*, p. 4929)

Here is a great national organization, and some individual being a member of a constituent organization makes a threat that he is going to do some damage to the property of the employer. Or, we will say, even some local union makes a threat that it is going to do some damage. I do not want an injunction to go against the officers of the national organization, who perhaps have sent out instructions that every effort is to be made to preserve order and to prevent unlawful acts by anyone. Yet these injunctions go, and have gone repeatedly, against the national officers who have taken those very precautions, because some subordinate union or some irresponsible individual has made threats or actually done damage. * * *

See also 75 Cong. Rec. 4693; Frankfurter and Greene, *The Labor Injunction* (1930), 74-75.

The liability of the unions and their officers for the conduct of individual members or strikers had not been predicated upon agency principles, for, as Senator Walsh stated, the members were not the agents of the officers or unions. Liability rested on an erroneous application of the principle of conspiracy law that all members of the conspiracy are responsible for what any of the conspirators may do.

In issuing injunctions against unions and their members engaged in strikes, some federal courts, in determining responsibility for acts done by union members, had treated them as unlawful conspiracies and had applied the principle "that every member of a conspiracy is responsible for every act committed by any other member of the conspiracy," it failed to distinguish between a combination to conduct a lawful strike and a conspiracy to do an unlawful act;⁶ assumed the existence of an illegal conspiracy because of the unlawful conduct of a few members, even though the latter was contrary to the advice of union officials and expressly disavowed;⁷ and issued injunctions against all union members and represent-

⁶ Statement by Senator Walsh of the Committee on the Judiciary (75 Cong. Rec. 4693).

⁷ Statement of Senator Wheeler (75 Cong. Rec. 4935).

⁸ S. Rep. No. 163, 72d Cong., 1st sess., pp. 19-20. See Frankfurter and Greene, *The Labor Injunction* (1930) 74-75.

" * * * The union and its officers may repudiate the violent deeds, may solemnly disavow them, may importune the strikers to be orderly and law-abiding, and yet may be held. 'Authorization' has been found as a fact where the unlawful acts have been on such a large scale, and in point of time and place so connected with the admitted conduct of the strike, that it is impossible on the record here to view them in any other light than as done in furtherance of a common purpose and as part of a common plan; where the union has failed to discipline the wrong-doer; where the union has granted strike benefits. Other courts, contrariwise, have held fast to general agency principles and have exacted the full quantum of proof normally required to establish the responsibility of one person for the acts of another."

atives participating in a strike without requiring proof of the existence of an illegal conspiracy, or of authorization or participation therein, or of ratification of the unlawful acts when done.*

The reports and the debates show that this was the mischief sought to be removed. This appears clearly from the following explanation given by Senator Walsh (75 Cong. Rec. 4693):

There is a principle of law to the effect that every member of a conspiracy is responsible for every act committed by any other member of the conspiracy, whether he participates in the act or not. So, Mr. President, the officers of a union declaring and endeavoring to manage a strike, although they may exercise every power at their command to restrain all acts of violence, however such acts may be provoked, are held answerable. I might say in this connection that the courts have repeatedly said that in the case of strikes there are probably acts of violence upon both sides. There is the strike breaker on the one side and the striker on the other side, each actuated by powerful passions and each filled with bitterness toward the other, so that clashes are very likely to ensue; so that, however the officers of the organization may exert themselves in order to prevent violence, it will occur. They issue bulletins urging all their members to observe the law, to do nothing beyond the limits of what the

* 75 Cong. 4927-37.

law will permit, and they even punish and restrain their members who have been shown to have violated such instructions. No matter what they do, violence will ensue, in all reasonable probability; and if the court finds that a conspiracy exists they become answerable for every act committed by any of those who are alleged to be within the conspiracy. That is entirely unjust. So that suits are brought against the officers of the unions to recover damages from them for all injuries done, either to person or property, by anybody who is connected with the strike, upon the ground that it is done by one of the conspirators, and all conspirators are liable.

The bill presented by the majority seeks to relieve the officers of the unions engineering a strike from liability to respond in damages for any loss sustained by the acts of anyone unless done by their authority, either express or implied, or unless they have afterwards ratified the unlawful acts.

See also Frankfurter and Greene, *The Labor Injunction*, pp. 61, 177-178.

2. *The history of Section 6 shows that it was not intended to abrogate the application of the principles of the law of agency*

The legislative history shows, on the other hand, an intention not to abrogate the general liability of labor organizations and their officers on agency principles—that is, the liability of a union for what its officials are authorized to do, as distinct

Before the bill appeared in the Congress which finally passed it, one of those who helped draft the measure stated with respect to Section 6 that it "applies accepted doctrines of agency to labor litigation". Frankfurter and Greene, *supra*, p. 221n.

The Senate committee report defended the bill against those who assail it as establishing a new law of agency on the ground that it merely establishes "a rule of evidence," obviously referring to the requirement as to "clear proof". S. Rep. 163, p. 19. The report then goes on to state that the opposing argument is based upon the rule in negligence law that a man is responsible for the acts of his agents "in due course of employment", not the rule of the criminal law that one is responsible only "on the basis of actual or implied participation".

* The pertinent portion of the Senate Report (S. Rep. 163, 72d Cong., 1st Sess., pp. 19-20) reads as follows:

"Opposition to this section has been voiced on the ground that it seeks to establish a 'new law of agency'. In the first place, this section is concerned especially with establishing a rule of evidence. There is no provision made relieving an individual from responsibility for his acts, but provision is made that a person shall not be held responsible for an 'unlawful act' except upon 'clear proof' of participation or authorization or ratification. Thus a rule of evidence, not a rule of substantive law, is established. The general power of every legislature to prescribe the evidence which shall be received and the effect of that evidence in the courts of its own government, has been repeatedly upheld by the Supreme

This report by itself is not too clear on the point here in question, and, if that were all there were, might not be regarded as supporting the Government's present contention. But the subsequent House Report submitted by Mr. La-

Court. (See *Fong Yue Ting v. U. S.*, 149 U. S. 698, 749; *Bailey v. Alabama*, 219 U. S. 219, 238.)

"But the argument is made that a man is held legally responsible for the acts of his agents taken in due course of employment. This argument is evidently based upon a doctrine of the civil law of negligence. It has no application to the criminal law. If a man is held responsible for an unlawful act, his responsibility rests on the basis of actual or implied participation. He is responsible for conspiring to do an unlawful act or for setting in motion forces intended to result, or necessarily resulting, in an unlawful act.

Strictly speaking, the legal relation of principal and agent does not exist in regard to the commission of criminal offenses. All who participate in the commission of such offense are either principals or accessories. (*Alderson v. State*, 22 Ohio State 303.)

But where the agent's criminal act is unauthorized and is not sanctioned or acquiesced in by the principal, especially where it is contrary to the principal's direct instructions, the latter can not be held criminally responsible therefor. (Clark and Skyles, *Law of Agency*, Vol. I, p. 1140.)

"The distinction should be clear. A man operating a dangerous machine negligently injures someone, and the negligence is imputed to the employer. But, there is a distinction between the torts of an employee and the crimes of an employee, and criminal responsibility is not to be imputed. If the president of a corporation sends a bill collector to persuade a debtor to pay a bill, instructing him to collect it in a peaceable manner, he does not become responsible for an assault by his employee upon the debtor."

Guardia expressly declares with respect to Section 6 that "this provision ~~does not~~ affect the general law of agency": House Report 669, 72d Cong., 1st Sess., p. 9. When read with the remainder of the passage, this statement indicates a belief that the "actual authorization" test was entirely consistent with general agency principles.¹⁰

In the debate in the Senate, the bill was defended on the floor by Senators Blaine, Wheeler, Walsh and Bratton.¹¹ Senators Hébert and Reed were critical of Section 6 because, in their view, it changed the rules of agency. 75 Cong. Rec. 4687, 4773, 4938, 5018. The sponsors of the bill met this objection not with a confession and avoidance but with a denial. Senator Blaine declared (75 Cong. Rec. 4629):

¹⁰ The pertinent provision of the House Report (No. 669, 72d Cong., 1st sess., p. 9) states with respect to Section 6: " * * * This section speaks for itself and is desirable because both individuals and associations have been held liable for unlawful acts of overzealous members which acts were neither authorized nor ratified by the officer or association *and were entirely without the scope of any authority committed by the officer or association of the offending member.*

"This provision does not affect the general law of agency, and it is necessary, under the circumstances, that the courts should know that Congress expects them not to hold officers or associations liable for the unlawful acts of a member without clear proof of actual participation in, or authorization of, any unlawful acts by the officer or association." [Italics supplied.]

¹¹ All but Senator Wheeler were members of the Committee on the Judiciary.

Section 6 is to extend the sound law of agency which prevails in all other business transactions to the officers, the members, the agents of organized labor.

In reply to Senator Hebert, Senator Walsh stated that (75 Cong. Rec. 4774):

The trouble with the argument of the Senator from Rhode Island is that the relation between the officers of the union who are engineering the strike, and one of the strikers in a remote portion of the country, is not that of master and servant, or of employer and employee, or of agent and principal. The doctrine of agent and principal has no application to the thing. If the person perpetrating the offense, destroying the property or injuring the property or injuring the person, stands in the relation of an agent to some one else, the some one else is of course responsible for all the injury done by the agent.

And the statement of Senator Wheeler is even more explicit in indicating that labor unions shall be governed by the same rule as to liability for acts done within an official's scope of authority (as distinguished from scope of employment) as are corporations. 75 Cong. Rec. 4937. Senator Wheeler stated:

I merely want to call the attention of the Senator from Oregon to the fact that the only way a corporation can be represented is through its agent. If the agent does something that is not authorized by

the corporation, the corporation can not at the present time be enjoined. The only time it could be enjoined, the only occasion when the railroad employees could enjoin it, would be when the agent of the corporation was doing something that he was authorized to do by the corporation itself.

Mr. REED. Does the Senator mean to say that the principal is liable only for acts which are authorized?

Mr. WHEELER. I mean acts which the agent is doing in the ordinary scope of his employment.

Mr. REED. That is different.

Mr. WHEELER. The scope of his authority—that is the way in which I meant to make the reference—but this case is entirely different from what the Senator contends. All we are contending with reference to the labor unions is that the labor unions shall not be enjoined because of the fact that somebody belonging to a labor organization does something that he is not authorized to do or something that is not within the scope of his employment.

That the section was designed merely to confirm the existing law applied by what were regarded as the better courts was also suggested by Senator Bratton, who indicated his belief that the courts were not justified, irrespective of the new statute, from issuing sweeping injunctions because of the conduct of a few members of a union. 75 Cong. Rec. 4934-4935.

When the bill came before the House a brief explanation of Section 6 was given by Representative O'Connor. He declared that if the Section "be a change in the 'law of agency,' as some claim, it is at most a change in the rule of evidence in civil cases only, a power well recognized as lodging in Congress." 75 Cong. Rec. 5463. This would seem to refer to the "clear proof" requirement, which not only is the only change in the law of evidence contained in the section, but which applies only to civil cases inasmuch as the burden in criminal cases is greater in any event.

We believe it fair to infer from the history of the statute as a whole that Congress intended the Act to reaffirm the sound agency principles which many courts had disregarded in labor cases, with perhaps a new evidentiary rule in civil cases as to the necessity of "clear proof".

3. *Under Section 6 corporations and labor organizations are liable both civilly and criminally for the conduct of their governing officers within the scope of a general grant of authority; express authorization to do a particular act is unnecessary*

The question remains as to the precise content of the law of agency applicable to labor organizations. The fact that under the Act the same principles apply to employers, who are normally corporations, and the statement by Senator Wheeler analogizing the liability of unions to that of corporations point the way to the correct test.

In cases involving individuals it is often stated that the principal is only criminally liable for his own acts and for those of his agent which he has expressly assisted or encouraged. E. g., *Paschen v. United States*, 70 F. 2d 491, 503 (C. C. A. 7); *United States v. Corlin*, 44 F. Supp. 940, 946 (S. D. Cal.); 2 Méchem, *Agency* (2d ed., 1914) Sec. 2006; 22 C. J. S. 149-150. But see 1 Wharton *Criminal Law* (12th ed, 1932) pp. 374-376. An exception to this rule has been recognized for statutory offenses in which an evil intention is unnecessary, where public policy requires that a business enterprise be responsible for the unlawful acts of its staff whether or not expressly authorized. See Méchem, *supra*, Sections 2007-2008, Wharton, *supra*. Sherman Act cases might well fall within this class, since neither evil intention nor wilfulness is an element of the statutory offense (*cf. United States v. Patten*, 226 U. S. 525, 543; *United States v. Reading Co.*, 226 U. S. 324, 373; *Addyston Pipe and Steel Co. v. United States*, 175 U. S. 211, 243), and since the Act was designed to protect the public against the conduct of a business enterprise.

It is unnecessary to go this far, however, as a less stringent rule has been applied to corporations than to individuals, especially in cases of the class last mentioned. For corporations, as distinct from individuals, cannot act except

through their officers and agents.¹² Since a corporation's charter never authorizes illegal conduct, a corporation could completely escape liability for unlawful acts by pleading *ultra vires* if express authority were required. Clearly the acts of a corporation's governing officials, at least, when acting on behalf of the corporation within the scope of the general powers delegated to them, are properly attributable to the corporation for criminal purposes as well as otherwise.

This Court so declared in *New York Central R. R. Co. v. United States*, 212 U. S. 481, a case which involved the allowance of unlawful rebates by the freight traffic manager and assistant freight traffic manager of a railroad. The Court there said (pp. 494-495):

But there is a large class of offenses, of which rebating under the Federal statutes is one, wherein the crime consists in purposely doing the things prohibited by statute. In that class of crimes we see no good reason why corporations may not be held responsible for and charged with the knowledge and purposes of their agents, acting within the authority conferred upon them. 2 Morawetz on Corporations, § 733;

¹² "It should also be remembered that as it is only by agents that corporations can act, it is not necessary to prove, on charging a corporation with a criminal act committed by an agent within his range of duty, that this act was specifically authorized by the corporation." 1 Wharton Crim. Law (12th ed.; 1932) pp. 375-376.

Green's Brice on Ultra Vires, 366. If it were not so, many offenses might go unpunished and acts be committed in violation of law, where, as in the present case, the statute requires all persons, corporate or private, to refrain from certain practices forbidden in the interest of public policy.

The problem has not since been presented to this Court, although in *United States v. Dotterweich*, 320 U. S. 277, 281, the Court noted that "the only way in which a corporation can act is through the individuals who act on its behalf." A number of decisions in the lower courts, however, have reached the same conclusion. *Egan v. United States*, 137 F. 2d 369, 379-380 (C. C. A. 8), certiorari denied, 320 U. S. 788; *Mininsohn v. United States*, 101 F. 2d 477, 478 (C. C. A. 3); *C. I. T. Corp. v. United States*, 150 F. 2d 85, 89-90 (C. C. A. 9); *Zito v. United States*, 64 F. 2d 772, 775 (C. C. A. 7); *United States v. Wilson*, 59 F. 2d 97, 98-99 (W. D. Wash.); *United States v. Nearing*, 252 Fed. 223 (S. D. N. Y.).

Recently, in *Egan v. United States*, 137 F. 2d 369 (C. C. A. 8), certiorari denied, 320 U. S. 788, a corporation and its president were convicted under the general conspiracy statute (18 U. S. C. A. § 88) for conspiring to violate the Public Utility Holding Company Act (15 U. S. C. A. § 791 (h)), which Act prohibited the making of political contributions by any registered public utility holding company. The corporation in-

sisted that its officers were not authorized to make such contributions either by express or implied authority of the board of directors, and that since such contributions were unlawful under the statute, the acts of the officers were *ultra vires*.

In affirming the conviction of the corporation the Circuit Court of Appeals said (pp. 379-380):

The test of corporate responsibility for the acts of its officers and agents, whether such acts be criminal or tortious, is whether the agent or officer in doing the thing complained of was engaged in "employing the corporate powers actually authorized" for the benefit of the corporation "while acting within the scope of his employment in the business of the principal." If the act was so done it will be imputed to the corporation whether covered by the agent or officer's instructions, and whether lawful or unlawful. Such acts under such circumstances are not *ultra vires* even though unlawful. There is no longer any distinction in essence between the civil and criminal liability of corporations, based upon the element of intent or wrongful purpose. Malfeasance of their agents is not *ultra vires*. *Washington Gas Light Co. v. Lansden*, 173 U. S. 534, 19 S. Ct. 296, 43 L. Ed. 543; *New York Cent. & H. R. R. Co. v. United States*, *supra*; *Joplin Mercantile Co. v. United States*, 8 Cir., 213 F. 926, 935, 936, Ann. Cas. 1916, 470; *United States v. Nearing*, D. C. N. Y., 252 F. 223, 231;

Mininsohn v. United States, 3 Cir., 101 F. 2d 477, 478; *Zito v. United States*, 7 Cir., 64 F. 2d 772, 775.

* * * * *

There was abundant evidence to authorize the jury to find that Union Electric's officers in making political contributions were engaged in the business of the company, "employing the corporate powers actually authorized" for the benefit of the company, while acting, although illegally, within the scope of their employment.

We submit that the same principles apply to the liability of a labor organization for the acts of its officials within the scope of the authority actually delegated to them. The Norris-La-Guardia Act was not designed to free labor unions from liability for such conduct of their officers, but from liability for the acts of individual members in no way authorized to bind the union. As we have seen, *supra*, pp. 17-25, the history of the Act shows that the unions were to be governed by the same agency principle as corporations.

No extensive argument should be necessary to support our position that the modern labor organization, like the corporation, should be treated as an entity and not as a mere partnership of individuals. As this Court pointed out in the first *Coronado* case (*United Mine Workers v. Coronado Co.*, 259 U. S. 344, 385):

No organized corporation has greater unity of action, and in none is more power centered in the governing executive bodies.

This is even more true now than in 1922. And the union, like the corporation, customarily acts through its officers and governing bodies.

The *Coronado* cases¹³ recognized that under the Sherman Act the same rule may be applied to a labor union as to a corporation. In the first of the cases, the Court declared (259 U. S. at 395):

A corporation is responsible for the wrongs committed by its agents in the course of its business, and this principle is enforced against the contention that torts are *ultra vires* of the corporation. But it must be shown that it is in the business of the corporation. Surely no stricter rule can be enforced against an unincorporated organization like this. Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency which the constitutions of the two bodies settle conclusively.

Although the *Coronado* cases were not criminal cases, we believe that in so far as the acts of the governing officials of the unions are concerned the analogy between the labor organization of today and the corporation extends to criminal liability as well. We recognize that in the *Coro-*

¹³ *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344; *Coronado Coal Co. v. United Mine Workers*, 269 U. S. 295.

nado cases the International Union was held not responsible for the conduct of its president or the local organizations. But this was on the ground that the former was not acting within the scope of its authority in dealing with the local strike, and that the latter had no authority to commit the International. The facts in the present case are entirely different, as we shall show.

The pertinent phrase of Section 6 of the Norris-LaGuardia Act is "actual authorization of such acts." Although this obviously excludes liability for acts merely within an agent's "apparent authority", it does not require express permission to perform a designated particular act. If it did, the sponsors of the legislation would not have insisted that Section 6 merely embodied the accepted principles of agency. An agent is "actually authorized" to perform an act when he is expressly or impliedly told or advised by his principal that he may engage in conduct of a class which comprehends that act. As Senator Wheeler stated on the Senate floor in explaining the bill (*supra*, p. 24), Congress was only attempting to prevent the issuance of injunctions against unions because some member of a union did something which either was not authorized or was not within the scope of his authority. (75 Cong. Rec. 4937.)

A union cannot escape responsibility for acts of officers authorized to enter into contracts for it on the plea that only lawful contracts were authorized and that the charter does not expressly

authorize the officers to violate the Sherman Act or any other law. A charter obviously would never contain an authorization to do anything unlawful. If an agent acts within the scope of his authority, that is, within the limits of what the principal has authorized him to do on its behalf, he is doing what he has in fact or "actually" been authorized to do.

United States v. International Fur Workers Union, 100 F. 2d 541 (C. C. A. 2); certiorari denied, 306 U. S. 653, does not support the petitioners' contention. In that case the trial court charged that a union would be criminally liable if its officers acted "upon behalf of the unions." As this instruction excluded the issue whether the union had authorized or ratified what its officers had done, the Circuit Court of Appeals correctly held it to be erroneous. Obviously the unauthorized action of union officers cannot be chargeable to the union even if done "upon behalf of the union." In the present case, on the other hand, the instructions specifically covered the question of authorization.

Truck Drivers Local No. 421, etc. v. United States, 128 F. 2d 227 (C. C. A. 8), also lends no support to the petitioners' argument. The court there held that where, under the rules of the general union, the acts of a division must be approved by the union to make them binding on that body, the general union was not liable under the Sherman Act for unapproved action of the division.

The court made it clear, however, that the union was liable for action it had authorized, whether expressly or impliedly. The court said (pp. 235-236):

To bind the union in a situation such as this, actual and authorized agency was necessary; mere apparent agency would not be sufficient to take the matter to the jury, unless the circumstances were so strong as competently to support an inference of actual authority.

We do not mean to imply that the union had to approve the action of the milkmen's division by formal motion or resolution. Such approval might perhaps legally be found to exist from actual knowledge and general sanction on the part of the union body of the efforts of the milkmen's division to cast the strength of the union into the situation."

¹⁴ United Brotherhood (Original Br. p. 56) quotes out of context a statement in the concurring opinion of Clark, J., in *United States v. Local 807 of I. Brotherhood*, 118 F. 2d 684, 668 (C. C. A. 2), affirmed on other grounds, 315 U. S. 521. The full quotation is as follows:

"* * * I do not see how a conviction can be had against the unincorporated Local 807 under the Anti-Racketeering Act; in other words, 'person' in the act does not include such an amorphous group as this association of around 10,000 persons. It is hornbook law that, absent a clear legislative intent, an unincorporated association does not commit crimes, 7 C. J. S., Association § 17, p. 43; and Congress has often shown that it knows how to include an association as a person when it so desires, as in the Sherman and Clayton Acts * * *." [Italics supplied.]

We submit that although Section 6 of the Norris-LaGuardia Act may be applicable here it means that corporations and labor organizations may be held liable for the conduct of their officials within the scope of the authority delegated to them. That is their "actual authority". Thus, if a union's charter empowers a particular official to enter into labor agreements on behalf of the union, he is engaging in an activity which has actually been authorized when he enters into such an agreement. It is with that type of situation that this case is concerned.

II

THE APPLICATION OF THE NORRIS-LAGUARDIA ACT TO THIS CASE

The Court has asked the parties to consider the District Court's "oral charge and written charges requested and refused involving Section 6; in the light of objections and exceptions by each and all of the defendants and the state of the evidence on that issue as to each of them".

A. *The charge*

The only portion of the charge which raises any serious issue is that relating to the liability of corporations and labor organizations, found at R. 1137-1138. This portion of the charge is subject to attack only by the labor union petitioners. Since it is not concerned with the liability of individuals, the individual petitioners, though

labor union officials, have no standing to object to it.¹⁵ The employer groups are in no position to raise any question as to the validity of the charge. One group of employers, petitioners in Nos. 11 and 13 pleaded *nolo contendere* and did not stand trial. As they concede (see p. 3, supra), the only questions they may properly raise on appeal relate to the validity of the indictment, and not to errors in the trial in which they did not participate. Other employer groups did stand trial, but did not appeal, and of course they are not now before the Court.

The charge contained the standard instruction as to proof beyond a reasonable doubt (R. 1145, 1141-1142). In addition it contained the following provision dealing with the question of agency:

You are to determine the guilt or innocence of a corporation by an examination of the acts done by its responsible officers or agents. The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation.

Likewise, the list of defendants include a number of labor union organizations

¹⁵ The individual petitioners' objection to the failure of the trial court to give a requested charge is considered *infra*, pp. 42-44.

* * *. It has been stipulated in this case that these labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that Act, separately and apart from the guilt or innocence of their members.

You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents.

If the principles which we have discussed on pages 10-35 *supra* are accepted as correct, the above charge was proper. We have argued that a labor organization, like a corporation, may in Sherman Act cases be liable criminally for the acts of its officers within the scope of their authority, and that the phrase "actual authorization" in the Norris-LaGuardia Act has not changed the prevailing law of agency in this respect. The two alternative methods of statement in the second sentence of the above quotation accurately set forth this criterion.

Petitioners' briefs do not seem to object specifically to the first expression—"the act of an agent done for or on behalf of a corporation and within the scope of his authority". This instruction in our view is in full accordance with the requirement of Section 6 of the Norris-LaGuardia Act. If an act is "within the scope of" an agent's

authority he is actually authorized to do it, as we have shown. And the same clearly is true if he is "performing duties actually delegated to him".

Petitioners' claim that the word "assumed" in the second clause implies that, apart from authority of any sort, acts which an agent assumes to do for his principal may make the latter criminally liable, and that such a doctrine would go further in imputing responsibility even than the rule in civil cases. We believe, however, that the second clause—"an act which an agent has assumed to do for a corporation while performing duties actually delegated to him"—merely expresses the same thought as the first in different language, and that if the word "assume" is read in its setting in the sentence petitioners' meaning can not be attributed to it. For the entire phrase clearly refers not to an act which an agent assumes to do during a period in which he is performing unrelated duties actually delegated to him, which no one contends would make a principal liable, but an act which the agent assumes to do within the range or scope of the duties actually delegated. Cf. *McKinney v. Dorlac*, 48 N. Mex. 149, 152, 146 P. 2d 867, 869, and *Vincent v. Powell*, 215 N. C. 336, 338, 1 S. E. 2d 826, 827, in which the phrases "while at work" and "while on duty" were held in the context to be synonymous with "in the course of his employment". By the same token "while performing duties actually delegated" would in its context in the

charge mean "in the course or scope of duties actually delegated".

This portion of the charge does not by itself, of course, satisfy the requirement as to "clear proof" in Section 6 of the statute. But the repeated charges as to the necessity of proving all elements of the offense beyond a reasonable doubt¹⁶ go further than Section 6 requires in this respect.

¹⁶ See the following portions of the charge at R. 1141-1142, 1145:

"In order to warrant you in finding a verdict of guilty against the defendants, or any of them, it is necessary that you be satisfied beyond a reasonable doubt that a combination and conspiracy as charged in the indictment was entered into between two or more of the defendants to violate the law of the United States in the manner described in the indictment. It is necessary further that, in addition to the showing of the unlawful combination and conspiracy; the Government prove to your satisfaction, beyond a reasonable doubt, that one or more of the acts described in the indictment was done by one or more of the defendants or at their direction or with their aid.

"Under the charge made the combination and conspiracy constitutes the offense and it must be made to appear from the evidence, beyond a reasonable doubt, before any defendant can be convicted, that such defendant was a party to the combination and conspiracy and that he continued to be such up to the time that acts were committed in furtherance thereof, if the evidence shows that there were any such. * * *

"* * * A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and im-

The record in this case demonstrates why further amplification of the charge was unnecessary. Three of the labor-union petitioners¹⁷ were actual parties to the illegal agreements. See pp. ~~50-56~~⁵¹⁻⁵⁶, *infra*. The fourth local involved, the Alameda Council, petitioner in No. 12, participated in the conspiracy through the acts of the Council itself, the governing body of the organization. See pp. 48-50, *infra*. And the International was charged with participation through approval of the agreement by the vice president expressly empowered by the charter to pass upon and approve the arrangements made by the local organizations. See pp. 45-48, *infra*. In these circumstances no problem as to the liability of unions for the violence or other misdeeds of individual members was presented, and there was no occasion for amplifying the charge in that respect.

It is true that the labor union petitioners requested the Court to give instructions substantially in the terms of Section 6. See Requested Instructions Nos. 55 and ~~56~~, set forth in the note

partially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

"Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you."

¹⁷ The petitioners in No. 10.

below¹⁸. The action of the trial court in refusing to give this instruction was proper, for, as we have shown, the instruction given had the same meaning as Section 6, properly construed (R. 1137-1138). Petitioners asked for instructions stressing the necessity for authorization by the unions of the acts of their agents and such instructions were given. Assuming that the instructions are correct and complete, the manner of phrasing them rests within the discretion of the court. *United States v. General Motors Corporation*, 121 F. 2d 376, 409 (C. C. A. 7), certiorari denied, 314 U. S. 618.

Requested Instruction No. 57 is similar, but raises the further question whether in order to impute liability to the international body its authorization must be express.¹⁹ In *Washington*

¹⁸ Requested Instructions Nos. 55 and 56 read as follows (R. 1172-1173):

55. You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act.

56. You are instructed that no labor union or organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof.

¹⁹ Requested Instruction No. 57 reads as follows (R. 1173):

You are instructed that an international trade union, that is, the international body, is not responsible for the acts of a

Gas Light Co. v. Lansden, 172 U. S. 534, this Court held the authorization of a corporation may be implied. The Court said (p. 544):

The corporation can be held responsible for acts which are not strictly within the corporate powers, but which were assumed to be performed for the corporation and by the corporate agents who were competent to employ the corporate powers actually exercised. There need be no written authority under seal nor vote of the corporation constituting the agency or authorizing the act. But in the absence of evidence of this nature there must be evidence of some facts from which the authority of the agent to act upon or in relation to the subject-matter involved may be fairly and legitimately inferred by the court or jury.

The above doctrine was reaffirmed in the *New York Central Railroad* case, *supra*, p. 27, a decision involving liability in the criminal field. And see *Egan v. United States*, *supra*, pp. 28-30.

Requested Instruction No. 58 (R. 1174) contained a charge in the language of Section 6 with district organization or union affiliated with and chartered by it except as such international body expressly authorizes the act of the local union or association. The International Brotherhood of Carpenters and Joiners of America cannot be found guilty in this case unless you find that it authorized acts to be done, or performed such acts with the intent of restraining interstate commerce pursuant to a conspiracy with the employer defendants to act as the instrument of the employers to suppress competition.

respect to the individual defendants.²⁰ Although this Instruction was refused, the charge contained a general provision (R. 1153) that—

In this case, several individuals are named as defendants, together with a number of corporations. While these defendants have been jointly indicted and charged with the offenses contained in the indictment, each defendant is entitled to an independent consideration by you of the evidence as it relates to his conscious participation in the alleged unlawful acts, and it is your duty to determine the guilt or innocence of each individual separately. You will understand that you may convict or acquit any or all of the defendants as the facts may warrant. This applies to corporations, associations and individuals alike.

The only qualification as to this requirement of "conscious participation" was contained in the charge previously considered relating to corporations and labor organizations. Thus, in so far as the individual defendants are concerned, the court required "conscious participation in the alleged

²⁰ Requested Instruction No. 58 reads as follows (R. 1174):

"You are instructed that no individual defendant who is an officer or member of one of the labor organizations involved can be found guilty in this case for an unlawful act, or acts, if any, of other officers, members or agents of such union organizations, except upon clear proof from the evidence that such individual defendant actually participated in or actually authorized such an act or ratified such unlawful act, if any, after actual knowledge thereof."

unlawful acts", which is the normal rule for the criminal liability of individuals (*supra*, p. 26) and at least as strict a rule as that imposed by the Norris-LaGuardia Act.

B. The evidence as to the various petitioners

Although the Court has asked for a consideration of the evidence on the issue of authorization as to each of the defendants, we assume that it does not desire prolongation of this brief by a detailed discussion of such evidence as to those defendants who are making no claim that the evidence supporting their convictions is insufficient in this respect. No question as to the evidence has been or can be raised by the nonlabor defendants, who either did not go to trial or did not appeal. See p. 3, *supra*. Nor have the individual defendants raised any question in their petitions for certiorari or their original briefs in this Court as to the adequacy of the evidence on this issue as to them, although in response to this Court's question petitioners in No. 10 have summarized the evidence as to some of the individuals. See Supplemental Brief for the Petitioners in No. 10, pp. 16-20.²¹

Without conceding that these summaries are complete, we are content to rely on them to show that each individual petitioner therein discussed

²¹ This discussion of the evidence as to the individual petitioners appears not to claim that the evidence as to them on this point was insufficient to support their conviction.

consciously and deliberately participated in the employer-employee combination, so that no question of authorization or agency can arise as to him. Five of the six individuals mentioned are admitted to have taken part in the negotiations leading up to the unlawful agreements or to have signed them. (*Id.* pp. 16-18.) As to the sixth, it is conceded that there was testimony that he advised a dealer not to bring in any ready-cut houses, apparently irrespective of whether they had the union label. *Id.*, at pp. 18-20.

We turn, therefore, to the evidence as to the petitioning unions, which we shall summarize. It should first be stated, however, that only two of these organizations, the United Brotherhood and Alameda County Council, have heretofore in this Court questioned the sufficiency of the evidence as to them on this issue. No such claims have heretofore been made by the Bay Counties District Council, Local No. 42 or Local No. 550, and we do not read the discussion of the evidence in their present brief as making any contention that the evidence as to them is insufficient.

1. *The United Brotherhood*

The constitution and by-laws of petitioner, United Brotherhood, provide that its General President "shall supervise the entire interests of the United Brotherhood (R. 461); that the First General Vice-President "shall have charge and issue the label" (R. 413); that the First Vice-

President "shall have power, to examine, approve or disapprove all local union, district council, state council or provincial council laws" (R. 413); and that the jurisdiction of the United Brotherhood "shall include all branches of the carpenter and joiner trade" (R. 461).

In compliance with the provisions of its constitution, the restrictive contract of 1938 was submitted to and approved by the First Vice-President of the United Brotherhood (R. 444-446) and was executed by petitioners Bay Counties District Council of the United Brotherhood, Millmen's Union No. 42, and Millmen's Union No. 550, in the name and as affiliates of United Brotherhood (R. 279, 288).

On May 26, 1939, the First Vice-President of the United Brotherhood approved the by-laws of petitioner Bay Counties District Council which provided that "in conformity with the agreement between the mill owners and millmen, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing Trade Rules, or are paying less than the wage scale hereinbefore quoted * * *." (R. 415, 416.)

Before approving the 1938 agreement and the 1939 by-laws of the Bay District Council, the First and Second Vice-Presidents of the United Brotherhood had been advised that the local unions in the Bay Area were refusing to install millwork

manufactured outside of California by a union shop paying lesser wages than those prevailing in the Bay Area (R. 480-485).

The evidence also shows that prior to the signing of the 1938 contract petitioners Local Unions Nos. 42 and 550, had protested against the importation of lumber products into the Bay Area and that this protest was referred to the "General Office" of the United Brotherhood (R. 447.)

The United Brotherhood sent a representative who participated in the negotiations which resulted in the 1938 agreement (R. 1037-1038).

Union petitioners' negotiating committee "would not do business" in the absence of the United Brotherhood's representative (R. 595). Progress of the negotiations with the millmen was reported to the United Brotherhood's General President (R. 1099-1100, 444). No agreements were signed until the "General Office" of the United Brotherhood had approved (R. 446, 594, 595).

The General President of the United Brotherhood participated in negotiations with the mill and cabinet manufacturers and assisted in the drafting of contract provisions relating to the non-shipment of millwork into the Bay Area (R. 900-901, 788, 897, 906-907, 1039, 439). Protests against the restrictive agreements from manufacturers outside the Bay Area were forwarded for the consideration of the Brotherhood's General President (R. 1089-1090, 1086-1087).

September 20, 1938, the Brotherhood's Gen-

eral President wrote an official of the Santa Clara Valley District Council of Carpenters, which is composed of a number of local unions affiliated with the United Brotherhood, and the Brotherhood's field representative, with respect to Union petitioners' attitude toward the importation of material into the Bay Area as follows (R. 1091-1095, 1037-1038):

In other words if they wish to continue to ship material into the San Francisco District, and use the label of the Brotherhood, it will be necessary that they pay a wage scale equal to that paid in the San Francisco area, and if they do not wish to pay that and want to continue to use the label they will have to agree not to ship material into that locality or any other locality paying a higher wage scale than that now being paid in your district.²²

The Union petitioners complied with the instructions of their General President (R. 1039-1042).

2. Alameda County Council

With respect to petitioner Alameda County Building and Construction Trades Council the evidence shows that the written contracts of 1936 and 1938, each of which contained the restrictive agreement, were signed by United Brotherhood of Joiners & Carpenters of America Millmen's Union

²² This letter refutes petitioner's argument that it was contrary to the policy of the United Brotherhood's officials to have the union label recognized in San Francisco irrespective of the wage schedule under which the goods were produced.

No. 550, one of the constituent bodies composing the Alameda County Building & Construction Trades Council (R. 279, 288). The Alameda County Council received letters from Petitioner Millmen's Union No. 550, protesting the importation of lumber products in violation of their agreement with the mill owners (R. 446-447, 499-500) and requesting the Alameda County Council's assistance in the enforcement of their agreement (R. 446-447, 499). Notations on the letters reveal that the Alameda County Council "concurred in" the attitude of Local Union No. 550 (R. 447) and the minutes of the Alameda County Council state that the request had been received and compliance therewith ordered (R. 499).

The minutes of Alameda County Council reveal further that on February 8, 1938, the President of Local Union No. 550 attended a meeting of the Alameda County Council and "called attention of the Council to the fact that the Millmen's Union were going to fight against the importation of special run, matched end T & G as it is a direct violation of their agreement with the mill owners and should be manufactured in the Bay District" (R. 499-500); that on June 7, 1938, the Alameda County Council "concurred in" a recommendation of its business agents "that the council concur in the action of the teamsters and clerks and lumber handlers [members of United Brotherhood (R. 823)] in enforcing their agreement under which no lumber can be shipped directly from the

North to the job" (R. 500); that Alameda County Council actually participated in the enforcement of the agreement by examining a representative of an Oregon firm before the Council's Board of Business Agents on the subject of contract violation (R. 343, 345-347, 379); and that after procuring an assurance that the violation would not occur again (R. 378) the Alameda County Council "concurred in" a recommendation that the Oregon manufacturer "be notified that unless (if) he fails to live up to the agreement of the Millmen's Union, Teamsters, Clerks and Lumber Handlers, and Building Trades, he will be placed on the 'We don't patronize List'". (R. 378-379). Business Agents of the Alameda County Council assisted and participated in joint investigations conducted by union petitioners for the purpose of ascertaining contract violations (R. 379, 500-501).²³

²³ Petitioner Alameda County Building and Construction Trades Council contends that there was insufficient evidence to hold it liable for the acts of its agents because "there was no proof of the nature of its fundamental agreement of association and no proof of the powers or even of the existence of any of its officers or agents". The Council, as its name implies, is an association of local unions. Its participation in the conspiracy was through its own acts, as revealed in the minutes of its meeting, not through agents or officers. Under Section 8 of the Sherman Act the words "person" or "persons" are deemed to include corporations or associations, and the portion of the charge (R. 1142-1143) requiring participation by each defendant controls the case as to this petitioner irrespective of any question of agency.

3. *Bay Counties District Council*

Petitioner Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America (No. 667) was a party to the written agreements of 1936 and 1938 (R. 279, 288) and participated in the negotiations which resulted in these agreements (R. 828-829, 833). The Bay Counties Council had protested the importation of millwork into the Bay Area for over twenty years (R. 839), and on March 20, 1939, protested to the Board of Supervisors of the City and County of San Francisco against the awarding of a contract for cabinet and millwork to any firm located outside the City and County of San Francisco (R. 864). Its by-laws provide that it will refuse to handle any material which does not conform to "the agreement between the mill owners and millmen" (R. 416). These by-laws were approved by the United Brotherhood (R. 415).

The minutes of Bay Counties District Council's meetings, show that the Buckley Sash and Door Company was placed on the Council's "unfair list" for "operating under non-union conditions and bringing practically all of their materials in from the North" (R. 418). Such material as the Sash and Door Company was permitted to receive from outside the Bay Area was marked "Exempted Material, by the Bay Counties District Council of Carpenters" (R. 352).

Bay Counties Council submitted proposed changes in the 1938 agreement to the General President of United Brotherhood "for his approval before submitting it to the employers in the shops and mills within the Bay Counties District Council's jurisdiction for their approval" (R. 444-445). Bay Counties District Council's minutes show further that the Council "earnestly requested" its officers and delegates to give Local Union No. 42 their full cooperation in its request for assistance in keeping the work of shops and mills in outlying districts out of the City and County of San Francisco (R. 419).

Upon inquiry as to why it "secured practically nothing in the San Francisco Bay Area" after 1936 (R. 509), representatives of an Oregon firm were informed by the Secretary of Bay Counties District Council that there was an understanding with the local manufacturers in San Francisco regarding the ability of that company in getting its work into San Francisco (R. 478); that after a number of conferences, the cabinet manufacturers stated that they were willing to concede a reasonable wage scale, "provided some way could be worked out that would protect them against outside competition" (R. 517) and that such an agreement was consummated (R. 520); that although they realized that such an agreement was illegal, they were "going to proceed along these same lines until such time as the

Government stops us" (R. 517); and that the Bay Counties Council could not permit their firm's millwork to be used in the Bay Area although it paid "the same prevailing wage scale as exists in San Francisco at the time the equipment is shipped" (R. 517-518).

On November 29, 1939, Bay Counties District Council placed the Symon Bros. Company on their "We do not patronize list" and referred the matter "to the San Francisco Building Trades Council for action" (R. 420) because the company had "received two carloads of unfair material" and had refused "to go along with the program" (R. 278-279). This action by Bay Counties Council against Symon Bros. was requested by Millmen's Local No. 42 (R. 420). Symon Bros. was informed by a representative of Bay Counties Council that they would be required to buy their materials within the Bay Area (R. 254).

4. Local No. 42

Petitioner Millmen's Local Union No. 42 was a party to the 1936 and 1938 agreements (R. 279, 288), and its representatives participated in the negotiations which resulted in such agreements (R. 393, 594, 532, 1006). The minutes of its meetings show that it agreed with mill owners to boycott concerns that brought millwork into the Bay Area (R. 366); received reports from its agents relating to discussions with mill owners concern-

ing the material that would be allowed shipment into the Bay Area (R. 385); discussed "ways and means" to enforce its agreement with the mill owners (R. 386); received reports on the progress being made in keeping material "coming from the North" out of the Bay Area (R. 386-387); received requests from cabinet manufacturers and the Lumber Products Associations that additional agents be placed in the field in order more effectively to enforce their agreement (R. 389); placed additional business agents in the field to keep "in constant touch with the employer associations and the individual employers and obtain their cooperation" for the purpose of having "their work done in local plants, hiring members of this local union" and to "keep a constant check on all Retail Lumber Yards and wrecking and second-hand yards, to see that the millwork and cabinets they sell are of local union made production and all related activities" (R. 553); placed non-cooperative firms on their "We do not patronize list" (R. 420); requested the cooperation of Bay Counties District Council in keeping the work of mills in outlying districts out of the Bay Area (R. 419); authorized its representatives to hold meetings with employees and employers' associations in the Bay Area "for the purpose of getting a uniform agreement" (R. 532); received reports concerning firms being placed on the "unfair list" by their business agents and promises received "not to

have any more (material) shipped into San Francisco" (R. 391-393)."

5. *Local No. 550*

Petitioner Millmen's Local Union No. 550, executed both the 1936 and 1938 agreements (R. 279, 288), was represented on the "Conference Committee" which negotiated the agreements (R. 819, 582), "worked jointly" with and made the "same demands" as Petitioner Millmen's Local Union No. 42 in the negotiations (R. 815). The minutes of its meetings reveal that it received "a résumé of the conferences with mill owners" and after a general discussion approved the "proposition submitted by the mill owners" by a secret ballot (R. 427); approved the 1936 agreement by a vote of 117 for and 16 against (R. 417) and the 1938 agreement by a vote of 104 to 2 (R. 584-586); requested all members to be on watch for imported non-union material (R. 427); placed pickets on "hot cargo" (R. 427); requested the

²⁴ Petitioner in No. 10 refers to the fact that Local No. 42 voted against acceptance of the agreement, and that the agreement was approved only by reason of the combined vote of No. 42 and No. 550. This statement in itself necessarily implies that Local No. 42 agreed to be bound by the combined vote, and the fact that No. 42 signed the agreements (R. 287, 290) shows that this was the situation. Local No. 42's adverse vote is understandable inasmuch as the agreement lowered its wage scale from \$9 to \$8.50, while raising No. 550's scale from \$8 to \$8.50. (R. 838.) Rejection of the agreement for this reason would, of course, not indicate any disagreement as to the policy of combining with employers to exclude incoming goods.

assistance of "The District Council and Building Trades Council" to help stop contractors from buying or using matched end T & G "coming in from the North in violation of our agreement" (R. 428); and was informed of the activities of its agents in making effective the terms of the agreement with mill owners (R. 583).

The minutes of the meetings of the Alameda County Building and Construction Trades Council reveal that the manager of the Pyramid Lumber Sales Co. "appeared before the Board at the request of Millmen's Union No. 550 to show cause why he should not be placed on the 'We Don't Patronize List'" and that representatives of Local No. 550 stated their case against the manager relative to his importing lumber into the Bay District (R. 378); and that agents of Local No. 550, in letters and visits at the meetings of the Alameda County Council, requested the assistance of the Council in the enforcement "of their agreement with the mill owners" concerning the importation of material into the Bay area (R. 446-447, 499-500).

We submit that the evidence is clear that the union petitioners actually authorized the acts of their officers and agents which form the basis of the conspiracy charged herein and for which the jury convicted. Such evidence is sufficient to satisfy even the most literal interpretation of Section 6. In addition, we submit that there was substantial evidence to support the finding of the

jury that all the union petitioners were parties to the conspiracy.

CONCLUSION

For the above reasons the judgment below should be affirmed.

Respectfully submitted.

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APRIL, 1946

APPENDIX

The pertinent sections of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. Section 101, *et. seq.*, read as follows:

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter

defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

FILE COPY

No. 668

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In the Supreme Court of the United States

OCTOBER TERM, 1914

LUMBER PRODUCTS ASSOCIATION, INC.,
(a corporation), et al.,

Petitioners,

VS.

UNITED STATES OF AMERICA,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT.

Brief of

Lumber Products Association, Inc. (a corporation),
Acme Manufacturing Co., Inc. (a corporation),
Eureka Sash, Door & Moulding Mills (a corpora-
tion), Carl Warden, Harry W. Gaetjen, Charles
Monson, Fred Spencer, W. P. Holmes, J. A. Hart,
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No. 668

In the Supreme Court of the United States

OCTOBER TERM, 1944

LUMBER PRODUCTS ASSOCIATION, INC.
(a corporation), et al.,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

Brief of

**Lumber Products Association, Inc. (a corporation),
Acme Manufacturing Co., Inc. (a corporation),
Eureka Sash, Door & Moulding Mills (a corporation),
Carl Warden, Harry W. Gaetjen, Charles
Monson, Fred Spencer, W. P. Holmes, J. A. Hart,
Charles Gustafson and Christian A. Wilder**

This cause is here on writ of certiorari to review a judgment of the United States Circuit Court of Appeals for the Ninth Circuit (R. 1697), which affirmed judgments of conviction (R. 1371, 1391) of the District Court for the Northern District of California, Southern Division, in a

NOTE: All italics in quotations are ours.

criminal action under Section 1 of the Sherman Act (Title 15, U.S.C., Sec. 1).

OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 1674-1696) is reported in 144 Fed.(2d) 546.

JURISDICTION

The judgment of the court below was entered on August 23, 1944 (R. 1697). A petition for a rehearing was filed on September 22, 1944 and denied on October 14, 1944 (R. 1698). A petition for certiorari was filed on November 11, 1944 and was granted on January 2, 1945. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C. 347).

STATEMENT OF THE CASE

Lumber Products Association, Inc., one of the petitioners, is an association of manufacturers of millwork in San Francisco, California. The other petitioners are members of that association. Together with three groups of labor unions and labor union officials, and two other groups of manufacturers, these petitioners were indicted (R. 4) in June, 1940, for alleged violation of the Sherman Act. The indictment was in two counts. The second count (R. 34), charging a violation of Section 2 of the Act (monopoly), was voluntarily dismissed by the government (R. 1372,

1392), leaving only the first count, which charged a conspiracy to restrain trade. The petitioners and all the labor defendants severally demurred to the sufficiency of Count One (R. 42, 52, 92). The demurrers were overruled (R. 87, 103), and subsequently two of the employer groups, including the petitioners, entered pleas of nolo contendere. The labor union defendants, together with the third group of employers, went to trial on pleas of not guilty and were convicted. Sentence was then imposed on all the defendants, whether convicted after trial or upon the pleas of nolo contendere. Appeals were taken to the Circuit Court of Appeals on a single printed record by the two groups of employers who had pleaded nolo contendere and by the labor union defendants. The appeals were determined by the Circuit Court of Appeals in a single decision. From this decision the labor union appellants filed petitions for writs of certiorari (Cases 666, 667 and 674), and the two groups of employers also filed petitions (Cases 668 and 675). All the petitions have been granted.

For convenience, the present petitioners (Case 668) may be referred to as the Lumber Products group, and, since the second count of the indictment was voluntarily dismissed and the first count alone is involved, that count may hereafter be referred to as the indictment.

The issue presented by the Lumber Products group is whether the indictment states an offense under Section 1 of the Sherman Act and whether their demurrers should have been sustained. This same issue is presented in Cases 666, 667, 674 and 675. It also presents essentially the same question of law as that involved in the issues arising out

of the trial of the cause and presented in Cases 666, 667 and 674.

The gist and essence of the indictment is stated and discussed at pages 6 to 14 of this brief in the Summary and in the first section of the argument.

SPECIFICATION OF THE ASSIGNED ERRORS TO BE URGED

The assignments of error relied on are Nos. 1, 3, 4, and 7 (R. 1436, 1437). They are:

1. and 7. The court erred in overruling the demurrers filed by defendants [of the Lumber Products group].

3. Count One of the indictment does not state facts sufficient to constitute any offense by any of these appellants against the United States, either under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, or otherwise.

4. The court erred in rendering judgment against and imposing sentence on each of these appellants, because Count One of the indictment fails to state facts sufficient to constitute an offense by any of these appellants against the United States, and because the demurrers heretofore filed by these appellants to Count One of the indictment should have been sustained.

STATUTES INVOLVED

The statutes involved are Section 1 of the *Sherman Act* (Title 15, U.S.C., Sec. 1), the *Clayton Act* (Title 15, U.S.C., Sec. 17, and Title 29, U.S.C., Sec. 52), and the *Norris-LaGuardia Act* (Title 29, U.S.C., Sec. 102, et seq.). These statutes are reproduced in the appendix to the petition in Case 667 and for that reason are not reproduced here.

ARGUMENT

SUMMARY OF THE ARGUMENT

The gist and essence of the indictment (R. 26-28) is that as part of a collective bargaining agreement between employers and unions in the San Francisco Bay area, concerning wages and working conditions, it was agreed between defendant employers and defendant labor unions that the employers would not purchase, and labor would not work on, millwork and patterned lumber from any mill maintaining wage and working standards inferior to those established by the agreement as the prevailing standards in the San Francisco Bay area.

That provision was directed at the maintenance of proper working conditions. It was not a boycott either of out-of-state mills, as such, or of nonunion mills, as such; it was aimed equally at union mills and local mills not maintaining working standards equal to those in the Bay area, and it did not reach out-of-state or nonunion mills that maintained such standards.

The Sherman Act forbids only unreasonable restraints, only such as are civilly invalid at common law. Conduct eliminating competition based on differences in labor standards does not violate the Sherman Act; therefore an agreement between unions and employers not to handle materials produced under labor standards inferior to those established by the agreement and prevailing in the particular community is entirely valid.

THE GIST OF THE INDICTMENT

The first subject of inquiry is the exact nature of the charge.

Despite some vague and general allegations which, if given a strained construction, might possibly be taken to charge more than the indictment really does, it is a fair statement, we believe, that the government has at all stages agreed with our view of the gist of the indictment and has not endeavored to claim for it a broader scope.

The gist of the charge is precisely what we have just stated it to be in the Summary. Thus, in the brief filed in the District Court in opposition to the demurrers, the government said (at p. 13):

"Viewed in the light of these ordinary rules of construction, Count One of the indictment at bar charges a conspiracy to exclude from the San Francisco Bay Area millwork and patterned lumber which has been manufactured under working conditions other than those prevailing in said area."

In its brief before the Circuit Court of Appeals the government said (p. 33):

"The gravamen of the charge in the indictment is that the defendants entered into an arrangement whereby the unions agreed that if the manufacturers would increase their wages the unions would in return refuse to work on millwork manufactured by others under a lower wage scale."

That the gist of the charge is as we have stated it is also apparent from an inspection of the indictment.

While paragraphs 26 and 27 (R. 26, 27) allege a combination to restrain commerce, they do so in terms of generality and conclusion, and it was necessary for the indictment to "descend to particulars." *United States v. Cruickshank*, 92 U.S. 542, 557-559; *United States v. Hess*, 124 U.S. 483; *United States v. Cowell*, 243 Fed. 730, 732; *United States v. Patterson*, 55 Fed. 605, 638; *United States v. John Reardon & Sons Co.*, 191 Fed. 454, 456; *Asgill v. United States*, 60 Fed.(2d) 780, 784 (4 Cir.); *Johnson v. United States*, 95 Fed.(2d) 813 (4 Cir.); *Fuller v. United States*, 114 Fed.(2d) 648 (9 Cir.). The charge is to be determined not from these two paragraphs alone but also from those that follow. *United States v. Armour & Co.*, 137 Fed.(2d) 269, 270 (10 Cir.).

Recognizing the necessity of descending to particulars, the indictment does so in paragraph 28 (R. 28). It is there alleged that to effectuate the conspiracy defendant manufacturers agreed to accede to wage scale demands of defendant unions, and

"(b) Pursuant to said understanding set out in paragraph 28, subparagraph (a), the defendants, on or about the 21st day of September, 1936, entered into a contract and agreement covering the wages to be paid to the members of defendant unions, in which said agreement it was further agreed that: " . . . no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement' (except certain named items)."

The gist of the indictment is the validity of the agreement alleged in subdivision (b) of paragraph 28. The following subdivisions of paragraph 28 refer to activities engaged in to carry out the agreement quoted in subdivision (b).

The opinion of the Circuit Court of Appeals speaks of a conspiracy to fix prices on out-of-state material,¹ and uses such invidious expressions as "splitting the take." To the extent that an agreement between unions and employers not to work on or handle materials produced under wage and working conditions less favorable to labor than those established by the same agreement may affect the price of the commodity by increasing the element of labor cost and by eliminating the competition of out-of-state material which, because of lower labor costs, can undersell the local product,—to that extent, but only to that extent, a price conspiracy is charged. When the Circuit Court of Appeals speaks of "monopoly pricing," it can have reference, legitimately, only to this effect on price of the elimination of competition in labor costs.²

The precise question in the case is whether this sort of restraint of trade is unreasonable or, indeed, is, within the

¹Thus, it states (144 Fed.(2d) 546, 549) that:

"there is here alleged a combination for a direct restraint upon commerce with an objective of destroying the competition of that commerce and permitting the fixing and maintenance of the local area prices at an arbitrary, artificial and non-competitive level. It is such intended restraints for such an objective at which the sanctions of the Sherman Act are directed."

²No charge of monopoly is in the case. That charge was made, in Count Two, but it was dismissed (R. 1372, 1392).

meaning of the Sherman Act, a restraint at all. To refer to the charged conspiracy as one of price-fixing is simply to beg the question by the use of select phraseology.

As we have said, neither in its briefs nor in its argument before either court below did the government claim that the indictment was a price-fixing indictment, unless in the sense just stated, nor, to our understanding, did it at the trial offer any evidence of price-fixing.

Moreover, the District Court, in passing on the demurrer, did not regard the indictment as charging price-fixing. In the case of *United States v. Bay Area Painters and Dec. Joint Committee*, 49 F.Supp. 732, the same judge sustained a demurrer to an indictment under the Sherman Act and had occasion to distinguish his ruling in the instant case, which was relied on by the government. In doing so, he stated his view of the present indictment (49 F.Supp. at 735) and made no reference to any charge of price-fixing, which, if it existed, would have been the clearest ground of difference.

To construe the indictment as charging a price-fixing conspiracy, in any other sense than might result from exclusion of material produced under inferior labor standards, would render it defective for repugnancy or, at least, would raise serious questions on that score.³ So far as the alleged conspiracy related to materials originating outside of California, a charge of an agreement to raise the

³For repugnancy as a defect, see 9 *Cyc. of Federal Procedure* (2d ed.), 256, Sec. 4072; 18 *Enc. of Pleading and Practice*, 742; 10 *Enc. of Pleading and Practice*, 536. Repugnancy vitiates, unless the repugnant material is rejected as surplusage.

price in the San Francisco Bay area of those materials is wholly repugnant to a charge of an agreement to exclude those materials from that area, for the latter contemplates the complete exclusion and non-handling of the materials in the area, while the former contemplates their continued handling and not their exclusion. Petitioners' demurrers in fact raised this very objection of repugnancy (Par. X at R. 55; par. VII at R. 94). The purpose of the demurrer for repugnancy was to crystallize the charge so that these defendants would know exactly what they were required to meet. To the objection of repugnancy the government replied thus (Brief in District Court, at p. 13):

"This objection, like the other objections that are proposed to this indictment, is founded upon a deliberate insistence upon construing each paragraph of the indictment as a detached charge. The indictment should be construed in its entirety (*Dunbar v. United States*, 156 U.S. 185; *United States v. Patten*, 226 U.S. 525; and *Stoers v. United States*, 192 Fed. 1 (C.C.A. 6, 1911)).

"Viewed in the light of these ordinary rules of construction, Count One of the indictment at bar charges a conspiracy to exclude from the San Francisco Bay area millwork and patterned lumber which has been manufactured under working conditions other than those prevailing in said area. Six of the paragraphs which set forth the means and methods used in furtherance of the conspiracy refer directly to an express agreement to this effect. The statement that the object and effect of this restraint was to raise and maintain the prices of millwork shipped in interstate commerce is perfectly consonant with this charge."

The construction so stated by the government was not only tenable but correct. Upon that construction of the indictment the demurrer for repugnancy was overruled and upon that construction—thus agreed to by the government and thus excluding any broader charge—these petitioners were content to plead *nolo contendere*, for to them nothing was left but an issue of law, which was fully reserved on appeal by the entry of the *nolo contendere* pleas (*Edwards v. United States*, 312 U.S. 473 at 478; *Washington Brewer's Institute v. United States*, 137 Fed.(2d) 964 (9 Cir.).

It is therefore clear that vague or general allegations in the indictment, such as those of paragraph 27(c) and paragraph 28(k), added nothing to the charge. This is further illustrated by paragraph 30 of the indictment entitled "Effect of the Conspiracy." It is there alleged (R. 33):

"The things done and the acts performed pursuant to and in furtherance of the combination herein alleged and described have had the effect of preventing persons, partnerships, and corporations located in the San Francisco Bay Area from purchasing millwork and patterned lumber manufactured in states other

"The rationale of the rule is that a plea of *nolo contendere*, like a demurrer, merely admits facts "well stated" or "well pleaded". As in any case, a defendant who has suffered an adverse ruling on an issue of law need not raise an issue of fact in order to preserve his rights on the issue of law. In a criminal case, unlike a civil case, the defendant may not refuse to plead further, for such a refusal constitutes "standing mute", whereupon a plea of not guilty is automatically entered and an issue of fact is thus raised. The legal issue can be preserved without precipitating a trial of fact only by pleading *nolo contendere* or guilty.

than California for shipment into the San Francisco Bay Area. As a result of said combination and conspiracy, the prices of millwork and patterned lumber used in the construction of homes and other buildings in the San Francisco Bay Area have been arbitrarily, unduly and unreasonably increased."

This paragraph directly relates the alleged effect on price to the exclusion of out-of-state material, and since it is here also alleged that out-of-state material was excluded from the Bay Area, the allegations of paragraph 28(k) can have reference at best only to locally produced millwork and not to millwork from out-of-state.

That the gist of the indictment is the validity of the agreement alleged in subdivision (b) of paragraph 28 of the indictment is also shown by the trial of the cause. While the Lumber Products group did not participate in that trial, it is proper to point to the course taken by the trial and to what the government there sought to prove as confirming our statement of the true construction of the charge made by the indictment. (For an analogous situation, cf. *United States v. Adams Express Co.*, 119 Fed. 240). In this connection we refer to the briefs filed herein by the labor petitioners in Cases 666, 667, and 674.

Since the sufficiency of criminal pleading is to be determined by practical and not technical considerations (*Asgill v. United States*, 60 Fed.(2d) 780, 784, 4 Cir.), and queries are to be answered in the manner most favorable to the accused (*Johnson v. United States*, 95 Fed.(2d) 813, 815, 4 Cir.), and in the light of the concession made by government counsel both in the District Court and in the

Circuit Court of Appeal, the nature of the charge is, we submit, entirely clear.

The Vital Facts.

The vital facts with respect to the agreement charged to be illegal are these: It was not an agreement aimed at out-of-state millwork because it was out-of-state millwork. It was an agreement directly related to labor standards. The matrix of the agreement was the employer-employee relationship.⁵ The objective was the protection of labor standards, and the exclusion of out-of-state materials, if any, was only incidental to the protection of San Francisco Bay area wage and working conditions. This incidental character is also shown by the fact that the indictment found it necessary to allege by way of inducement or preliminary recital that some out-of-state mills maintain a lower wage scale than Bay area mills (R. 7, 8).

The Source of the Clause.

It is said in the brief attached to the petition in Case 667 (at p. 10):

"Stripped of conclusions and characterization, the ultimate factual charge of the indictment is that defendants effectuated a conspiracy to restrain inter-

⁵For this reason a case such as *Columbia River Co. v. Hinton*, 315 U.S. 142, cited by the government below, is not in point. That case merely involved a controversy "upon which the employer-employee relationship has no bearing." So, also, *American Medical Association v. United States*, 317 U.S. 519.

state trade in millwork and patterned lumber by defendant employers acceding to wage scale demands of defendant unions in return for which defendant unions agreed not to handle or work on material manufactured under a lesser wage scale (R. 4-37)."

According to this statement, the indictment charged that the request for the clause excluding materials produced under inferior labor standards came from the employers in return for acceding to wage demands. A similar statement as to the source of the exclusion clause appears in the opinion of the court below (144 Fed.(2d) at 548). We believe, however, that no significance has been attached by the government to any language of the indictment which might bear such a construction. Indeed, at the trial the government not only did not prove, but made no attempt whatever to prove, that the clause was inserted at the employers' request. It is an undisputed fact that it was the unions which affirmatively insisted on the exclusion clause, and that the employers merely acceded to the demand of the unions. The fact is so stated in the petitions filed here by the labor unions. Thus the brief attached to the petition in Case 667 also states (at p. 11):

"The evidence shows without conflict that such clause was not included at the instance of defendant employers but of defendant unions; that the list of material exempted from the restriction was added at the insistence of the employers over the objection of the unions as a qualification of the latter's complete closed shop demand. The purpose in seeking a closed shop was the normal objectives of jobs for union members and the increase and standardization of wages."

The petition in Case 666 is much longer, and its whole tenor is that the clause was one upon which the unions had been insisting for years and which they imposed on the employers. While the issue involved in the case of the instant petitioners is the sufficiency of the indictment, and not of the proof, yet in the Circuit Court of Appeals the government did not claim that the indictment charged more than it claimed to have proved at the trial, and it treated the legality of the combination charged and that proved as identical:

Moreover, we submit that it is quite irrelevant from which side, or at what point, or in what manner, the clause came into the collective bargaining agreement. We state our reasons for this position at pages 38 to 48 below.

II.

THE INDICTMENT CHARGES NO OFFENSE

The labor union appellants, the petitioners in Cases 666, 667, and 674, discuss with care and in detail the statutes enacted in recent years, such as the *Norris-LaGuardia Act*, and point out that the agreement was not a violation of the Sherman Act under those statutes and the reasoning and authority of cases such as *United States v. Hutcheson*, 312 U.S. 219; *United States v. Building & Construction Trades Council*, 313 U.S. 539; *United States v. United Brotherhood of Carpenters, etc.*, 313 U.S. 539; *United States v. International Hodcarriers, etc. Council*, 313 U.S. 539; *United States v. Carozzo*, 37 F.Supp. 191, affirmed 313 U.S. 539; and *United States v. American Federation of Musicians*, 47 F.Supp. 304, affirmed 318 U.S. 741.

With this discussion we fully agree, and we adopt the argument. Avoiding duplication where possible, we devote ourselves to a somewhat different approach. It is our position that quite apart from any special immunities that labor may have by reason of the *Clayton* or *Norris-LaGuardia Acts*, the covenant involved in the present case was not illegal because it was not a restraint in the common law sense, or, if a restraint, it was not unreasonable.

A. THE SHERMAN ACT CONDEMNS ONLY RESTRAINTS THAT ARE UNREASONABLE AND FOLLOWS THE COMMON-LAW TEST OF REASONABLENESS.

The Sherman Act does not make illegal every restraint of trade which interrupts interstate transportation, but only unreasonable restraints. Disclaiming all novelty, it merely applies federal criminal sanctions in the field of interstate commerce to such restraints as are civilly unlawful at common law.

This principle no longer needs exposition. Enunciated in *United States v. Standard Oil Company*, 221 U.S. 1, it has been strongly reaffirmed, particularly as regards labor matters, in *Apex Hosiery Company v. Leader*, 310 U.S. 469 (cf. pp. 486, 497-499). And see *United States v. Gold*, 115 Fed.(2d) 236, 237 (2 Cir.).

Thus, it was said in the *Apex* case (p. 497):

“Certain classes of restraints were not outlawed when deemed reasonable, usually because they served to preserve or protect legitimate interests, previously existing, of one or more parties to the contract.”

The “rule of reason” has heretofore been applied, in enforcing the antitrust laws, to agreements between employ-

ers and labor. *National Association of Window Glass Mfrs. v. United States*, 263 U.S. 403 (per Mr. Justice Holmes).

As said by Mr. Justice Brandeis in *Bedford Cut Stone Company v. Journeymen Stone Cutters' Assn.*, 274 U.S. 37, "The act does not establish the standard of reasonableness." The determination of what is "reasonable" involves social judgments and a choice of ends, which, we submit, has already been made in the American polity with respect to the issue involved in this case.

Prior to the decision of the *Apex* case, Mr. Edward H. Miller of the *Antitrust Division* of the Department of Justice, in an article entitled "Antitrust Labor Problems: Law and Policy" appearing in a symposium on the Sherman Act in Vol. VII, No. 1, of *Law and Contemporary Problems* (Winter, 1940) referred to the *Window Glass* case and to the opinion of Mr. Justice Brandeis in the *Bedford Stone* case and said:

"The right of collective bargaining by labor unions was and is recognized by the antitrust laws to be a reasonable exercise of collective power. The Department does not question, or have any desire other than to protect, the right of labor unions to use their bargaining power legitimately to consolidate it, to forestall speed-up systems, and to improve the condition of their members by promoting improvements with respect to wages, hours, health, and safety. To restraints of trade resulting incidentally from such activities, the rule of reason prefixes the legalizing 'reasonable'."

CONDUCT ELIMINATING COMPETITION BASED ON DIFFERENCES IN LABOR STANDARDS DOES NOT VIOLATE THE SHERMAN ACT, THOUGH IT INFLUENCES PRICES BY VIRTUE OF THAT ELIMINATION.

Combinations and agreements aimed at legitimate labor objectives are legal even though they do restrain interstate commerce.⁷

As this court pointed out in the *Apex* case, the activities of labor organizations necessarily restrain competition but are not for that reason violative of the Sherman Act.

"A combination of employees necessarily restrains competition among themselves in the sale of their services to the employer; yet such a combination was not considered an illegal restraint of trade at common law when the Sherman Act was adopted either be-

The parties drafting the indictment realized this to be so, because in paragraph 29 (R. 32) it is alleged that the defendant unions were not attempting to enforce or protect the right to bargain collectively on wages, hours and working conditions or any other "legitimate objective" of labor. But paragraph 29 states a pure conclusion of the pleader concerning the significance of the agreement. Whether that agreement is aimed at a legitimate objective is a question of law presented on the face of the indictment. As said by the present Chief Justice in *United States v. Hutcheson*, 312 U.S. 219, at 239:

"The legality of the alleged restraint under the Sherman Act is not affected by characterizing . . . as this indictment does, as . . . not within the 'legitimate object of a labor union'."

To the same effect, *United States v. American Federation of Musicians*, 47 F.Supp. 304, 309, affirmed 318 U.S. 741; *United States v. Bay Area Painters and Decorators Joint Committee*, 49 F.Supp. 733.

cause it was not thought to be unreasonable or because it was not deemed a 'restraint of trade.' (p. 502)

Strikes or agreements not to work, entered into by laborers to compel employers to yield to their demands, may restrict to some extent the power of employers who are parties to the dispute to compete in the market with those not subject to such demands. But under the doctrine applied to non-labor cases, the mere fact of such restrictions on competition does not in itself bring the parties to the agreement within the condemnation of the Sherman Act. *Appalachian Coals v. United States*, supra (288 U.S. 360, 77 L.Ed. 829, 53 S.Ct. 471). *Furthermore, successful union activity, as for example consummation of a wage agreement with employers, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards. Since, in order to render a labor combination effective, it must eliminate the competition from non-union made goods, see American Steel Foundries v. Tri-City Cent. Trades Council*, 257 U.S. 184, 209, 66 L.Ed. 189, 199, 42 S.Ct. 72, 27 A.L.R. 360, *an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act.*" (p. 502)

This court further said in footnote 24, page 504:

"Federal legislation aimed at protecting and favoring labor organizations and eliminating the competition of employers and employees based on labor conditions regarded as substandard, through the estab-

lishment of industry wide standards both by collective bargaining and by legislation setting up minimum wage and hour standards, supports the conclusion that Congress does not regard the effects upon competition from such combinations and standards as against public policy or condemned by the Sherman Act."

It then referred to the Norris-LaGuardia Act, the Public Contracts Act of 1936, the National Labor Relations Act, the Railway Labor Act of 1934, and the Fair Labor Standards Act of 1938, and concluded footnote 24 as follows:

"This series of acts clearly recognizes that combinations of workers eliminating competition among themselves and restricting competition among their employers based on wage cutting are not contrary to the public policy."

See also *United States v. Hutcheson*, supra; *United States v. Building and Construction Trade Council*, supra; *United States v. International Hod Carriers, etc. Council*, supra, and *United States v. American Federation of Musicians*, supra, and the discussion of these cases in the briefs of the labor union appellants in Cases 666 and 667.

It seems evident that the dissenting opinion of Mr. Justice Holmes and Mr. Justice Brandeis in *Duplex Printing Press Company v. Deering*, 254 U.S. 443, the dissenting opinion of Mr. Justice Brandeis and Mr. Justice Holmes and the separate opinion of Mr. Justice Stone in *Bedford Cut Stone Company v. Journeymen Stone Cutters' Assn.*, 274 U.S. 37, reflect what is now accepted as the law, particularly in view of the Norris-LaGuardia Act (*United States v. Hutcheson*, supra, at 236; *Milk Wagon*

Drivers' Union v. Lake Valley Farm Products Co., 311 U.S. 91). In the *Bedford* case, Mr. Justice Stone said, at page 55:

"As an original proposition, I should have doubted whether the Sherman Act prohibited a labor union from peaceably refusing to work upon material produced by non-union labor or by a rival union, even though interstate commerce were affected. . . . I should not have thought that such action as is now complained of was to be regarded as an unreasonable and therefore prohibited restraint of trade."

We also call attention to the dissenting opinion of Mr. Justice Holmes in the same case.

C. THE QUESTION UPON WHICH DECISION TURNS IS THE EXTENT AND NATURE OF THE INTEREST WHICH THE PARTIES SEEK TO PROTECT.

The question upon which decision turns is the extent and nature of the interest which the parties are seeking to protect.⁸

There can be no question of the exceptionally close relation between the protection of labor interests and a rule excluding from the local area materials produced under inferior labor standards. Such a rule has far closer connection with labor's ultimate end than, for example, union and closed shop rules. The better reasoned decisions have always held that boycotts, rules, and other conduct designed to enforce all union shops were legal and non-violative of the Sherman Act though interstate commerce

⁸Cf. page 85 of the article by Mr. Edward H. Miller referred to in the footnote 6 supra.

was directly restrained, on the ground that unionization was reasonably related to the immediate and legitimate interest of preserving wages and working conditions,⁹ and this view is now, of course, the accepted law (*United States v. Hutcheson*, supra).

A fortiori, the agreement in the present case is less subject to criticism, since it is even more closely related to preserving wages and working standards. Under it, if goods are produced by a mill maintaining the standards of wages and working conditions embodied in the Bay area collective bargaining agreements, those agreements do not prevent the purchase of or the performance of work on such goods, though they may be obtained from a non-union shop, either in California or out of California. And if the goods are produced in a mill with standards less favorable to labor than those in the Bay area, the goods are excluded though produced in California or in a union shop. The restraint of interstate commerce is incidental to protection of working standards in the local area.

In *C. S. Smith Metropolitan Market v. Lyons*, 16 Cal. (2d) 389 at 400; 106 Pac.(2d) 414 (Oct. 14, 1940), the court notes what ought to be a commonplace to any student of economics:

"The members of a labor organization may have a substantial interest in the employment relations of an

⁹Cf. *Rossert v. Dhuy*, 117 N.E. 582, 221 N.Y. 342 (an opinion concurred in by Mr. Justice Cardozo); opinion of Mr. Justice Holmes in *Paine Lumber Company v. Neal*, 244 U.S. 459; *National Fireproofing Company v. Mason Builders Association*, 169 Fed. 259 (2 Cir.).

employer although none of them is or ever has been employed by him. The reason for this is that the employment relations of every employer affect the working conditions and bargaining power of employees throughout the industry in which he competes. * * *

"Modern industry is not organized on a single shop basis, * * *. The market for a product may be so competitive that one producer cannot maintain higher labor standards resulting in higher costs than those maintained by his non-union competitors."

The interest of those in an industry in the working standards elsewhere in the same industry is recognized in the *Apex* decision, where this court, in stating that public policy commends; and that the Sherman Act does not legalize, the elimination of competition "based on labor conditions regarded as substandard", expressly referred to the "establishment of *industry-wide standards* * * * by collective bargaining" (310 U.S. 501, Note 24).

In view of the foregoing principles, it can no longer be denied that labor may follow a course of conduct designed to protect its working standards and wages or even its strength as an organization, and if the unions had threatened, or engaged in, strikes, picketing, or boycotts against the employer defendants to prevent them from handling or bringing into San Francisco millwork produced under working conditions and standards less favorable than those prevailing in that Bay area, the unions would have been immune from indictment as well as from

suit by the employers for injunction or other relief. By strike, picketing, and boycott,—by all non-violent means,—the unions could have endeavored to force the defendant employers to agree, as part of the collective bargaining process, not to handle such products.

D. THE FACT THAT THE RULE AGAINST GOODS PRODUCED UNDER INFERIOR LABOR STANDARDS WAS EMBODIED IN AN AGREEMENT BETWEEN UNIONS AND EMPLOYERS IS NO GROUND FOR CONDEMNATION.

In the present case the Circuit Court of Appeals makes a startling and unreasonable distinction and bases its decision upon it. It holds that when the unions entered into an agreement with the employers by which both sides agreed not to handle millwork produced under the inferior conditions, the pursuit of what theretofore had been a legal objective became transmuted into an illegal conspiracy. This distinction is, we submit, utterly untenable.

(1) Under the Recent Decisions and in Light of the Policy of Recent Statutes.

The theory of the court below is that the *Norris-LaGuardia Act* affords no protection to the contract between unions and employers because that act relates to "labor disputes", and, forsooth, that when labor attains its end by achieving an agreement with the employers, the dispute is over. Such a view, we submit, makes the law an expression of cloistered futility. It cannot be that by successfully obtaining acquiescence in its rule in a collective bargaining agreement, a union automatically illegalizes that rule. The agreement merely evidences the

success of the union's efforts. Unless the collective bargaining agreement contained a provision that employees would not work on materials produced under substandard conditions, union members might be faced with the dilemma of violating either their own rule or their collective bargaining agreement with their employers, for the one would command them not to work and the other would oblige them not to decline to work.

Every court that has considered the question, other than the court below, has accepted it to be elementary that the fact of participation by employers in an agreement with a union does not make illegal what was theretofore a legal objective.

Allen Bradley v. Local Union No. 3, 145 Fed.(2d)

215 (2 Cir.) (October 12, 1944). The court there expressly disagreed with the decision of the Circuit Court of Appeals in the present case. This court granted certiorari on January 2, 1945, and the case is now before this court as Case No. 702.

United States v. Bay Area Painters, etc. Committee, 49 F.Supp. 733, 738 (D.C. N.D. Cal.).

United States v. B. Goedde & Co., 40 F.Supp. 523, 532 (D.C. Ill.).

Gundersheimer's Inc. v. Bakery & Confectionery Workers' International Union of America, 119 Fed.(2d) 205 (Ct. of App., D.C.).

United States v. American Federation of Musicians, 47 F.Supp. 304, 309, affirmed in 318 U.S. 741.¹⁰

¹⁰Although there the government desired to enjoin activity of a union alone, it sought to do so on the ground that the activity was an attempt to force employers to

Rambusch Decorating Co. v. Brotherhood of Painters, Decorators and Paperhangers of America, et al., 105 Fed.(2d) 134 (2 Cir.).¹¹

We do not discuss the foregoing cases because they, and the implications of the *Hutcheson* case, have been or will be thoroughly covered in the briefs of the Labor Union petitioners in Cases 666 and 667:

In View of the National Labor Relations Act.

This court has said that the Sherman Act must be read in the light of other statutes (*United States v. Hutcheson*,

combine with the union to restrain interstate commerce and therefore sought a combination between labor and non-labor groups, which the government claimed, just as it does here, was not exempt from the Sherman Act. The court replied that the contract with the employers, if obtained, would only be for "a closed shop" in a sense large enough to include a shop which excludes not only non-union workers but also machines."

¹¹The plaintiff had by collective bargaining agreement agreed to abide by the union's rules. One of the rules, so made part of the agreement, was that if a contractor from one city engaged in a job in another, he would pay the wage scale of his own community or of the community where the job was being performed, whichever was higher. The employer sued to have this term of the agreement declared void under the antitrust laws and as an unlawful restraint of trade (see 105 Fed.(2d) at 136, second column). The validity of the requirement as a unilateral rule of the union had already been sustained in several cases (cited in 105 Fed.(2d) at 137), including *Barker Painting Co. v. Brotherhood of Painters, etc.*, 15 Fed.(2d) 16 (3 Cir.), cer. den. 273 U.S. 748. Here the question arose as to the validity of the requirement *when embodied in an agreement between the employer and the labor union*. Its validity was upheld.

supra). In *United States v. Carozzo*, 37 F.Supp. 191 (affirmed 313 U.S. 359), it was pointed out (p. 194) that the *National Labor Relations Act*, as well as the *Norris-La Guardia Act*, is one of the statutes constituting the matrix in which these cases must be decided. The *Apex* case, supra, in footnote 24, likewise includes the *National Labor Relations Act* in its list of statutes which must be considered.

Under the *National Labor Relations Act* it was the duty of the employer defendants to bargain with the unions. The unions' demand, that standards inferior to those prevailing in San Francisco, or which were then to be established by the collective bargaining agreement under negotiation, should not be permitted to affect the local standards, was a legitimate demand. Had the employers refrained from acquiescing in that demand, they could not have protected themselves from boycotts and strikes by suing for injunction or damages, or by seeking prosecution by the Government. Had they acquiesced in the demand and complied with the union rule, and had yet declined to put their acquiescence into a formal agreement, they would have run the risk of being held guilty of violating the *National Labor Relations Act*. *Heinz Company v. N. L. R. B.*, 311 U.S. 514 at 523 to 526; *N. L. R. B. v. Knoxville Publishing Co.*, 124 Fed.(2d) 875, 882 (6 Cir.). The stated policy of the *National Labor Relations Act* is to reduce industrial strife by encouraging agreements between employers and employees (29 U.S.C., Sec. 151), thereby, in the view of Congress, promoting that very commerce which the Sherman Act also is supposed to protect.

It simply cannot be that both the unions and the employers became guilty of violating the Sherman Act at the moment that the rule became embodied in a collective bargaining agreement, as one of the elements of the wage term. If, as said in *United States v. Hutcheson*, supra (at p. 235): "It would be strange indeed that although neither the Government nor [employer] could have sought an injunction against the acts here challenged, the elaborate efforts to permit such conduct failed to prevent criminal liability punishable with imprisonment and heavy fines", it would be equally strange to reward the successful competition of favored collective bargaining by criminal condemnation. In *United States v. United Brotherhood of Carpenters*, 313 U.S. 539, and *United States v. Building and Construction Trades Council*, 313 U.S. 539, conduct defying orders of the N. L. R. B., and therefore repugnant to the National Labor Relations Act was held not to violate the *Sherman Act* because it was protected by the *Norris-LaGuardia Act*. How much more immune to the *Sherman Act*, then, is conduct which is favored by both the *Norris-LaGuardia Act* and the *National Labor Relations Act*?

In *Southern Steamship Company v. N. L. R. B.*, 316 U.S. 31, this court in another connection remarked (p. 47):

"Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task."

It may analogously be observed that the enforcement of the Sherman Act by a revitalized Antitrust Division should not be pushed in zealous disregard of another, and much later, statutory scheme of encouragement of collective bargaining (cf. *McLean Trucking Co. v. United States*, 321 U.S. 67, 79).

(2) Under Common Law Principles.

Furthermore, we submit, decision does not rest merely on any question whether a labor dispute exists or has ceased, or on any considerations of recent statutes. Quite independently of the decisions beginning with *United States v. Hutcheson*, supra, and of the statutes underlying those decisions, an agreement such as is here involved should be deemed legal, because it is not unreasonable.

An agreement between manufacturers alone, to which labor is not a party, not to handle materials made under labor conditions inferior to those prevailing in the community might itself be legal. Save for combinations such as those fixing prices, agreements are not illegal merely because they restrain trade; they must be in unreasonable restraint (cf. *National Association of Window Glass Manufacturers v. United States*, 263 U.S. 403), or "an unreasonable destruction of competition" (*Paramount Famous Corp. v. United States*, 282 U.S. 30 at 41), or an "undue restriction" of competition or "undue obstruction" of trade (*Appalachian Coals, Inc. v. United States*, 288 U.S. 344, 360).

Confronted with the holding in the *Apex* case that the elimination of "competition based on differences in labor standards" is not an unreasonable destruction, and that

an agreement having that objective is not condemned by the Sherman Act (*Apex Hosiery Co. v. Leader*, 310 U.S. 469, 504), the government below argued that the stated principle is limited to a combination of labor alone to which employers are not parties. We submit that there is no such limitation. The rule of the *Apex* case was rested on basic principles common to all agreements and combinations. In finding the principle on which the defendant union was there exonerated, this court expressly referred to "the doctrine applied to *non-labor* cases", citing the *Appalachian Coals* case (p. 502). And in stating the rule concerning elimination of price competition based on differences of labor standards, it did so generally, citing, among other cases, *National Association of Window Glass Manufacturers v. United States*, supra, a case of agreement among all the manufacturers as well as with the union. The application to labor was but a specific instance of a general rule. This court said that "eliminating the competition of employers" as well as eliminating the competition of employees "based on labor conditions regarded as substandard" is not a violation of the Act (footnote 24, 310 U.S. at 504).

A more extensive immunity of combinations involving only labor, based on labor statutes such as the *Norris-LaGuardia Act*, was first announced in decisions subsequent to the *Apex* case. They establish that an agreement between labor elements alone, for selfish purposes, is wholly immune from the Sherman Act, *United States v. Hutcheson*, 312 U.S. 219. While an agreement in which employer elements participate, either alone or with labor, may enjoy no such absolute immunity, its legality is to be

tested by other factors, the purpose and objective,—by judgments “regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end”—and if the objective is “licit”—e.g.; directly and rationally related to the improvement or protection of labor standards,—the restraint is not unreasonable and therefore not illegal. *United States v. Hutcheson*, supra; *Truck Drivers' Local No. 421 v. United States*, 128 Fed. (2d) 227 (8 Cir.); *Allen Bradley Company v. Local Union No. 3*, 145 Fed. (2d) 215 (2 Cir.).

The principles determining what is “licit” were not declared in the *Hutcheson* case but stem back through the *Apex* case to the opinions of Justices Holmes, Brandeis and Stone in *Bedford Cut Stone Company v. Journeyman Stone Cutters' Assn.*, 274 U.S. 37, and *Duplex Printing Press Company v. Deering*, 254 U.S. 443, and beyond that to the mode of reasoning of Mr. Justice Holmes in his dissenting opinion in *Vegeahn v. Guntner*, 44 N.E. 1077; 167 Mass. 92 (1896).

On reason, we submit, a group of employers should be able to agree not to handle the materials of those who have a competitive advantage by virtue of the fact that the latter maintain substandard labor conditions, if necessary to enable the former to grant labor's demands for superior conditions.

Such an agreement was not illegal or void at common law (*National Fireproofing Company v. Mason Builders Association*, 169 Fed. 259 (2 Cir.), and *National Association of Window Glass Mfrs. v. United States*, 263 U.S. 403), and therefore it is not violative of the Sherman Act though it may affect interstate commerce.

National Fireproofing Company v. Mason Builders Association, supra, was a case quite similar to the present, though a civil action. One defendant was an association of builders in the City of New York. The other defendants were unions of bricklayers. The object of the suit was to restrain the enforcement of certain clauses of an agreement between the association and the unions. The agreement was one of the biennial collective bargaining agreements relating to rates of wages, hours of labor and other matters. The plaintiffs objected to two clauses, one of which required the members of the employer association to include in their subcontracts for masonry and brickwork all work in connection with installation of fireproofing; in other words, they could not subcontract fireproofing to anyone but the party doing the general bricklaying or masonry. The second clause was that no member of the bricklayers' union could work for anyone not complying with all the rules and regulations of the contracts.

The result was to confine to members of the bricklayers' unions all fireproofing work in the city of New York. The plaintiff was an out-of-state corporation engaged in the installation of fireproofing, and the effect of the agreements was to destroy its New York business.

The court held that the agreement did not violate common law (p. 265):

"It is not enough to establish illegality in an agreement between certain persons to show that it works harm to others. An agreement entered into for the primary purpose of promoting the interest of the parties is not rendered illegal by the fact that it may incidentally injure third persons. * * * So several

*laborers and builders may combine for mutual advantage, and, so long as the motive is not malicious, the object not unlawful, nor oppressive and the means neither deceitful nor fraudulent, the result is not a conspiracy, although it may necessarily work injury to other persons. * * ** And so the essential question must always be whether the object of a combination is to do harm to others or to exercise the rights of the parties for their own benefit. * * *

"The object of clause 10 manifestly was to make the stipulations of the agreement generally effective. The mason builders joining in the agreement being bound by its stipulations, it was necessary for their protection that competing outside builders should only employ bricklayers upon the same conditions. So it was for the advantage of the bricklayers themselves to have means for enforcing uniformity in terms of employment."

"It also seems clear from the testimony that the object of clause 5 was to benefit the bricklayers. Certainly from their point of view substantial benefits accrue from preventing the installation of fireproofing by separate contractors. Through the operation of this clause the men who do the exposed work secure the easier and safer inside work and more continuous employment than would otherwise be the case. The specialization of the bricklayers' trade through the growth of a class of workmen who would devote themselves to setting fire brick and would, in the end, take all that work from the ordinary bricklayer, is prevented." (p. 268)

* * *

"It therefore follows that the defendants have not entered into a combination to accomplish an unlawful or oppressive object, or a lawful object by unlawful

or oppressive means, and are not guilty of common-law conspiracy." (p. 270)

In *National Association of Window Glass Mfrs. v. United States*, *supra* (opinion by Mr. Justice Holmes), the United States brought a proceeding to enjoin a certain combination as a violation of Section 1 of the Sherman Act. Defendants were all the manufacturers of hand blown window glass and a union embracing all labor to be had for this work in the United States. The agreement established a certain wage scale and then provided that this scale would be issued to one set of factories for one period of the year and to another for another period, but that no factory could get the scale for the entire year and without the scale could not obtain labor and must cease operation. The lower courts enjoined the combination. This court reversed the judgment and held that the combination, while in restraint of trade, was not an unreasonable restraint, because there were not sufficient men to enable all the factories producing hand blown glass to run profitably during the whole working season, and the purpose of the arrangement was to secure employment for all of the men during the whole of the two seasons. This case was decided purely under common-law principles and without reference to the *Clayton Act*, which, as now construed, would have further supported the decision.

In footnote 25 at page 507, this court said in *Aper Hosiery Co. v. Leader*, *supra*:

"Whether the interest of the labor unions in these cases¹² in maintaining and extending their respective

¹²*Bedford Cut Stone Company v. Journeymen Stone Cutters' Ass'n*, 274 U.S. 37; and *Duplex Printing Press Company v. Deering*, 254 U.S. 443.

organizations, rendered the restraint reasonable as a means of attaining that end within the common law rule, or brought the restraints within the rule of reason developed and announced in the Standard Oil case, was not discussed and we need not consider it here. *Restraints upon competitive marketing of a manufacturer's product brought about by an agreement between the employer and his employees in order to secure continuous employment of the employees was held to be within the rule of reason and therefore not an unreasonable restraint of trade in National Asso. of Window Glass Mfrs. v. United States, 263 U.S. 403, 68 L.Ed. 358, 44 S.Ct. 148.*"

In the present case, the importation into the Bay area of millwork made under labor standards inferior to those there prevailing could properly be deemed as destructive of those standards and inimical to the terms of the collective bargaining agreement embodying or attempting to establish them. Consequently, it could not be illegal at common law and, therefore, could not be illegal under the Sherman Act, to insert into such collective bargaining agreement a provision that the millwork so produced would not be handled.

In the *Apex* case (310 U.S. at 497), it was said that if an agreement serves to preserve or protect legitimate interests, previously existing, of one or more parties to the contract, it is deemed reasonable. In its opinion in the instant case the Court below said (144 Fed.(2d) at 549):

"Also there is no here the protection or preservation of a previously existing interest lending reasonableness to a restraint, but rather the bold pursuit of restraint for the direct mutual advantage of the par-

ties, to be gained by the monopoly price tribute from the consumer."

This statement is, we submit, unsound and wholly epithetical. The interest of the unions was to receive and to be protected in higher labor standards. That alone was sufficient to legalize the contract, for it is enough, under the principle of the *Apex* case, that the contract protect a previously existing legitimate interest of "one or more" of the parties; it need not protect such interests of all the parties. Nevertheless the agreement also protected such an interest of the manufacturers. That interest was to be free to grant the higher labor standards demanded by the unions and thus to have labor peace. The agreement protected a legitimate interest of labor, and it protected a legitimate interest of the employer by enabling him to comply with labor's insistence for superior wage and working conditions. To speak of "monopoly price tribute from the consumer" is to beg the very question whether the elimination of competition based on labor standards is illegal.

In *Rambusch Decorating Co. v. Brotherhood of Painters, etc., et al.*, 105 Fed.(2d) 134 (2 Cir.), which involved an agreement between employer and union that, if a contractor of one city engaged in a job in another, he would pay the scale of his own city or of the community where the job was done, whichever was higher, the court said (p. 138):

"Taking the construction heretofore had of this provision, we can see that in ultimate essence it is a requirement securing higher wages when the stated conditions exist. Any contract designed to secure

higher wages may restrain trade in one sense if it is effective, for it will hamper the weak employer who cannot afford the increase. In another sense, however, it may promote commerce by making for better and more peaceful labor relations. A contract with such a purpose is hardly to be held illegal of itself, or else all union organization goes. Cf. *National Association of Window Glass Manufacturers et al. v. U. S.*, 263 U.S. 403, 44 S.Ct. 148, 68 L.ed. 358; * * * Of course, the real point here relied on is the supposed discrimination between non-resident and resident contractors. Discrimination of this general kind is one of the most natural things in the world, applied by states and cities in civil service appointments; by courts in cost bonds and other burdens against non-residents; by merchants, customers, laborers and servants in trusting and favoring the local man with whom they have long dealt and expect to deal in the future. Such discrimination, if made along state lines, might violate constitutional restrictions; but as pointed out in *Burker Painting Co. v. Brotherhood of Painters*, D. C. 12 F.2d 945, supra, that is not the case here, for the provision applies only to cities and towns, though uniformly and without discrimination among them."

"* * * In the last analysis, the prime object of the rule attacked is to establish a standard of wages." (p. 139)

E. THE SOURCE OF THE CLAUSE IS IRRELEVANT.

It is a fact, as we have seen (pp. 15, 16, supra), that the clause under review came into the collective bargaining agreement upon the demand and at the insistence of the unions and not at the request of the employers. Never-

theless, because that fact may not be explicit on the face of the indictment, we now consider whether the source of the clause is relevant.

1. **The Test of Legality Is the Matrix of the Agreement and Its Relationship to Labor Standards.**

We submit that the manner in which the clause found its way into the collective bargaining agreement is not relevant to the question of its legality. It should make no difference whether the unions in the first instance demanded the exclusion of materials made under inferior standards or whether they first merely demanded certain high wages and conditions and were informed that their demands could not be granted in view of the competition of materials from mills where lower standards prevail. The vital point is the relation of the covenant to the protection of local standards, and that relationship is well expressed in the language of *C. S. Smith Metropolitan Market v. Lyons*, 16 Cal.(2d) 389, 490, 106 Pac.(2d) 414, which bears repeating:

"Modern industry is not organized on a single shop basis. * * * The market for a product may be so competitive that one producer cannot maintain higher labor standards resulting in higher costs than those maintained by his * * * competitors."

We submit that it is irrelevant from which side or at what point or in what manner a covenant comes into the collective bargaining, if, as here, it has been occasioned by legitimate labor demands, is inextricably enmeshed in the matrix of the employer-employee relationship, and is closely and rationally related to the protection of labor

standards. That matrix and that relation are the vital elements.

Once a term becomes part of the fabric of a collective bargaining agreement, and if its relationship to the protection of labor standards is evident, the warp cannot be separated from the wool by unrealistic inquiry into the manner or point of time in the bargaining when the term came into the negotiations. Such an approach ignores the essential character of collective bargaining.

In *Boyle v. United States*, 259 Fed. 803 (7 Cir.), a union had entered into an agreement with the employers in Chicago which provided that an agreed increase in wage scale "is to go into effect only in case the party of the second part has succeeded before October 1, 1911, in bringing about a condition which will prevent none but union label switchboard work to be installed in the City of Chicago." The evidence showed that it was agreed not to install in Chicago "outside made switchboards." The wage scale was thus agreed to by the employers provided that the union eliminated competition of outside switchboards. In *United States v. B. Goedde & Co.*, 40 F.Supp. 523, the court concluded that, in view of the recent decisions, the *Boyle* case, in which a conviction under the Sherman Act was affirmed, may no longer be considered good law.

In the *Allen Bradley* case, now before this court as Case 702, the restraints went even further than those in the *Boyle* case, for the agreement between the unions and the local employers in *Boyle's* case excluded out-of-state

switchboards because they were non-union, whereas in the *Allen Bradley* case the agreement between the unions and the local employers excluded out-of-state material wholly without regard to the labor standards under which the material was produced, without an opportunity to the out-of-state producers to comply with any labor standards the unions desired, and irrespective of whether those goods were union-made or made by other locals of the same International. Yet the Circuit Court of Appeals held that the law was not violated.

The District Judge in the *Allen Bradley* case had granted an injunction following a report of a Special Master. The Special Master was of the view that if the combination involved an attempt, as its objective, to improve the condition of union members by obtaining higher wages or better working conditions, or even to improve working conditions in factories outside the state, it would be legal. Concluding that the combination had no such objective, but was a bare-faced attempt to exclude out-of-state goods *per se*, the Special Master ruled for plaintiff (*Allen Bradley Co. v. Local Union No. 3, etc.*, 41 F.Supp. 727). The District Judge was of the same view (*Allen Bradley Co. v. Local Union No. 3*, 51 F.Supp. 361), believing that it was not the fact that the "employer-employee relationship was either the origin or foundation of the controversy. That relationship does not even affect the instant controversy." He distinguished decisions of this court (*Milk Wagon Drivers' Union v. Lake Valley Farm Products Co.*, 311 U.S. 91, and *New Negro Alliance v. Sanitary Grocery Company*, 303 U.S. 552), on the ground that in those cases the "employer-employee relationship

was the matrix of the controversy." Yet the Circuit Court of Appeals of the Second Circuit reversed the decision (*Allen Bradley Co. v. Local Union No. 3*, 145 Fed.(2d) 215).

The restraint effected by the agreement in the present case does not go anywhere near as far as that in the *Boyle* case or in the *Allen Bradley* case; since here the agreement was not aimed either at non-union or out-of-state materials made under labor conditions equal to the local standard.

If the court in the *B. Goedde* case was correct concerning the *Boyle* decision, or if the decision of the Circuit Court of Appeals for the Second Circuit is correct in the *Allen Bradley* case, the decision of the court below in the instant case is necessarily incorrect. On the other hand, the Circuit Court of Appeals in the *Allen Bradley* case may be in error, and still the decision of the court below in the instant case would be erroneous, for the *Allen Bradley* case is an infinitely stronger case for illegality than the present; the elements which the District Judge there found lacking are all present here.

2. **A Concession That the Purpose of the Criticized Covenant Was to Enable the Employers to Meet Union Wage Demands Is Tantamount to a Confession of Error.**

The government in its brief in the Circuit Court of Appeals said (at p. 36):

"The most favorable light in which this case may be put from the standpoint of the appellants, therefore, is to say that it was an agreement entered into to enable the manufacturers to meet union wage demands."

Rather, this is the *least* favorable interpretation. In any event, since an indictment must be construed as favorably as may be in favor of defendants (*Johnson v. United States*, 95 Fed.(2d) 813 (4 Cir.)), this is a concession that no view less favorable may be taken. And, we submit, it concedes the case. In the *Window Glass* case, 263 U.S. 403, the agreement restricted production in order to permit profitable operation by the employers; the restraint was nevertheless held not to be unreasonable because its effect was to enable the employers to give proper employment and wages.

To uphold the legality of the agreement in the present case does not, as the government contended below, mean that it would be lawful for labor and non-labor groups to enter into combinations whereby the non-labor groups fixed prices and the labor groups policed the prices, nor does it even necessarily mean that such combinations would be legal in any case where it could be shown that a price-fixing scheme was entered into for the purpose of enabling the non-labor groups to meet wage demands.

Not only are price-fixing agreements on a different plane, where consideration of reasonableness and unreasonableness do not enter (*United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150; *United States v. Tremont Pottery Company*, 273 U.S. 392), but, more important, the government's argument overlooks (1) the fact that the principle of the *Apex* case goes no further than to permit influence on price competition "by eliminating that part of such competition which is based on differences in labor standards" (310 U.S. at 503), and (2) that the agreement here

goes no further than that principle allows. Labor and employers may properly ask that those paying higher wages be free of competition of those paying lower wages. With that freedom obtained, it may be that prices should be left to rise or fall with the competitive variations of all other factors. Price-fixing agreements may be beyond the principle because they remove not merely the factor of competing labor standards but all factors. The agreement here *fixed no prices* but was confined to the elimination of the exact part of competition specified in the *Apex* case.

If ever an agreement between labor and employers can be valid, upon judgment of the "licit and illicit," the agreement in this case is it, for it is directly related to wages and working standards and goes not one step further. If this agreement is invalid, then it is difficult to conceive of any agreement between labor and non-labor groups restraining commerce which would be valid.

Neither does it follow, as the government also claimed below, that, if this agreement is held to be legal, a manufacturer group desiring to fix prices or gain a monopoly would need only to wait for a union to make a demand having to do with terms and conditions of employment, whereupon the manufacturers, professing inability to meet the demand unless prices are fixed or a monopoly given, could validly enter into an agreement to that effect with the union policing it. If the labor demands are mere subterfuge, the manufacturers in fact "using" labor for ends *unrelated to labor standards*, a different case would be presented. The law retains the power to distinguish unlike situations.

The distinction is that between a case where a labor organization is being used by a combination of others as a tool to suppress competition or fix prices¹³ and a case where the agreement between labor and employer is *rationally and directly related to a legitimate labor end*. This is the basis on which the cases relied on by the government are all to be distinguished from the present. The distinction is stated in *Albrecht v. Kinsella*, 119 Fed.(2d) 1003 (7 Cir.):

"* * * When officials of the labor union step outside their union labor fields and act as highwaymen, levying tribute on those who wish to build homes or other buildings, acting for their individual gain, the immunity granted to labor unions under the amendment to the Sherman Act does not extend to them. They are not acting as labor unions except in name. The test is whether the activity complained of is one promotive of, and within the scope of, the legitimate objects of a labor union or whether the union is being misused by those holding official position or positions of trust therein, who, conspiring for their private and their personal profit, are using the union name to obtain immunity from Sherman Act prosecutions and at the same time shield their misconduct behind an organization whose fair name and activities are likely to mislead a court or jury as well as the public."

In the instant case, the opinion of the court below states (144 Fed.(2d) at 549):

¹³Cases of agreement between employers and unions for purposes of extortion and racketeering, such as *Local 167 v. United States*, 291 U.S. 293, or cases involving violence are clear instances of illegality and have no relation to a case such as the present.

“Nor are the appellants aided by the statement in the Apex case that the restrictive effect upon the power of an employer to compete in commerce by the elimination of price competition based on differences in labor standards, resulting from the successful consummation of a wage agreement by a union, is not within the Sherman Act. Not only was the price competition of mill work and patterned lumber products of Washington and Oregon attributed in part to more efficient, technically improved, large scale methods, but here the elimination of competition was not a result merely incidentally flowing from the achieved objective of increased wages but the means of obtaining it.”

The reference to more efficient large-scale methods of Washington and Oregon mills is wholly beside the point for the simple reason that the portion of the price competition which arose from such efficiency was not aimed at by the agreement of the parties. It was necessary for the Oregon and Washington mills only to have conformed to the Bay area labor standards, and if they then still had a competitive advantage because of large scale methods, nothing in the agreement would have prevented them from reaping in the San Francisco Bay area the benefit of such economies. But the agreement between the defendant unions and the employers would not permit those out-of-state mills to reap in the Bay area the benefit of “economies” in labor standards. That was its purpose. If it was an illegal purpose, the agreement was illegal, but otherwise not. If competition arising from non-labor economies was eliminated, that elimination was only incidental, occurring solely because producers who

operated with inferior labor standards fortuitously commanded the other economies. But certainly the possession of other competitive advantages does not confer a privilege to indulge in the use of inferior labor standards with immunity from what would otherwise be proper and legal economic pressure. Yet such is the effect of the decision of the court below.

The further statement by the court below that

"the elimination of competition was not a result merely incidentally flowing from the achieved objective of increased wages but [was] the means of obtaining it."

fully reflects, we submit, the question-begging character of the decision. Of course the elimination of competition was not a result flowing from the objective of increased wages. Such a result could flow from such a cause only as respects employers who recognized and adhered to the higher wage and labor standards. But what of those who did not so conform? That is the vital question. If "modern industry is not organized on a single shop basis," and if "the market for a product [is] so competitive that one competitor cannot maintain higher labor standards resulting in higher costs than those maintained by his . . . competitor" (pp. 23, 24, above), the failure of some competitors to conform and adhere to higher wages impairs the ability of others to give such wages to labor in the local area. It is entirely true that the elimination of a certain competition was a means of obtaining the achieved objective of increased wages. *And we submit that the elimination of that competition is justified and legalized by that very fact.*

Evidently the court below was of the view that it is socially and economically unwise to deprive the consumer of the opportunity of buying goods at prices lower than possible if higher wage and work standards are enforced. This view of social and economic policy may or may not be sound, but it is not the view which the American public has seen fit to select and which has been embodied in legislation and decision.¹⁴

F. THE CASE OF UNITED STATES v. BRIMS.

In support of its contention, the government below relied primarily on *United States v. Brims*, 272 U.S. 549, decided in 1926, opinion by Mr. Justice McReynolds. (Mr. Justice Stone refrained from participating.)

It is believed in many quarters that the *Brims* case no longer expresses the correct view of the law even in its own situation of fact, that it is either wholly erroneous or that it must receive a limited interpretation (cf. *Allen Bradley Company v. Local Union No. 3*, 145 Fed.(2d) 215, and *United States v. B. Goedde & Co.*, 40 F.Supp. 523). Thus in the *Allen Bradley* case the court said (at p. 225):

"As one commentator puts it, the *Brims* case should be deflated to its position as one of a line

¹⁴At page 551 of its opinion (14 Fed.(2d)) the court below further said that the acts of the unions and the employers were

"... not to secure any legitimate advance of the laborer's interest. They are squeezing implements to extort what, in effect, is a capital levy on the home builder and other consumers."

This is but another expression of the same question-begging reasoning.

of cases uncritically condemning refusal to work on non-union products delivered in interstate commerce'—a position no longer tenable in the form stated—and that 'when the union is permitted to act alone, an agreement with employers should not automatically add the condemnable virus.' Tunks, *A New Federal Charter for Trade Unionism*, 41, Col.L.Rev. 969, 1012."

Whether the *Brims* case is still good law on its own facts or not, it is not in point. If the record in that case (No. 212, October term, 1926) is followed through, beginning with the indictment and passing through demurrer, trial, decision of the Circuit Court of Appeals, briefs of counsel before this court, and the decision of this court, the fact becomes clear. There the indictment simply charged, without more, that certain defendant mills in Chicago conspired with and used the defendant carpenters' union to prevent mills located outside of Illinois from selling and delivering their building materials into the city of Chicago,—i.e., to exclude out-of-state material, as such, for the employer's benefit. Thus the indictment alleged that there were certain Chicago manufacturing plants (defendants) and certain other named plants outside of Illinois (*Brims R.*, pp. 1, 2). It then alleged (*Brims R.* 3):

"And the grand jurors aforesaid, . . . do further present that said manufacturer defendants, . . . in order to monopolize the business of supplying said builders and building contractors in Chicago with such building materials and secure excessive prices for their own building materials unlawfully have . . . engaged in a conspiracy among themselves and with

the union and contractor defendants hereinafter named, in unreasonable restraint of, and which, as hereinafter shown, in fact has substantially, materially, and unreasonably restrained the trade and commerce of said concerns * * *, whose plants are located outside of said city of Chicago and in other States than Illinois, by preventing said concerns and other concerns from and obstructing them in selling and delivering their building materials in and shipping the same to said city of Chicago for delivery there in competition with said building materials of said manufacturer defendants; which said unlawful conspiracy and the circumstances under which the same was formed and has been consummated are now here described in detail."

The indictment then averred (Brims R., p. 4):

"Said manufacturer defendants before said period of time, to wit, on April 18, 1918, by offering to employ thereafter as such 'inside' men only carpenters and joiners who were members of said organization [the union] had induced said organization and its members thereafter to refuse to install any of such building materials in houses and buildings in said city as should be sold by said manufacturing concerns whose plants were located outside of said city of Chicago and outside of said State of Illinois to builders and building contractors in said city for shipment and delivery to, said city, which said offer was thereupon accepted; * * *"

The government, in its petition for certiorari (p. 20), pointed out that the manufacturers, as payment to the unions for assisting the manufacturers' plan of exclusion, induced a third group—the contractors—to agree to a

union shop by offering them a 16% discount not given to out-of-state contractors; the government also said:

"* * * These manufacturers had no interest in the exclusion of such material as nonunion made only, but their interest arose in the restricting of the installation of nonunion-made material in the city of Chicago by reason of the fact that it would necessarily prevent and interrupt the shipment of mill-work into that territory in competition with them."

Upon overruling a demurrer to the indictment, the trial judge said (Brims R., 18, 19):

"So far as the indictment is concerned, the situation resolves itself down to this one proposition:

There is a charge here that the manufacturing defendants, by certain promises of reward, induced the labor organizations to do certain things, which resulted in an interference with interstate commerce. * * *

* * * that conspiracy will have to be proved on the trial or the case will be taken from the jury."

In his opening statement at the trial the United States Attorney remarked that while the agreement between the manufacturer defendants and union defendants referred to the exclusion of non-union material, "we will show to you gentlemen that all of these meetings together was to eliminate from the Chicago market *not union-made material, but materials made outside of Chicago*" (Brims R. 20).

The Circuit Court of Appeals reversed a conviction on the ground of variance between the indictment and the proof on the theory that the proof showed that the agreement between the employers and the union was one whereby the

union defendants would not work upon non-union-made millwork (6 Fed.(2d) 98). In the brief for the millmen defendants filed in this court, it was argued (p. 56) that the judgment was properly reversed because of the variance wholly irrespective of whether the conduct actually proved was also violative of the Sherman Act, a question not even discussed. This court concluded that there was no variance because all the evidence, taken together, was sufficient to sustain a jury verdict that the charge made in the indictment—that the real purpose of the agreement was the elimination of out-of-state competition for the benefit of the employers unrelated to the interests of the employees—had been sustained.

In contrast, the indictment in the present cases does not rest on a charge of agreement to exclude out-of-state competition but states the very terms of the agreement, which is one merely to exclude materials produced under sub-standard working conditions.

The construction of the *Brims* decision stated above is the construction given it in *Aper Hosiery Co. v. Leader*, supra. There, this court said (p. 501):

“The question remains whether the effect of the combination or conspiracy among respondents was a restraint of trade within the meaning of the Sherman Act. This is not a case of a labor organization being used by combinations of those engaged in an industry as the means or instrument for suppressing competition or fixing prices. See *United States v. Brims*, 272 U.S. 549, 71 L.ed. 403, 47 S.Ct. 169; *Local 167, I. B. T. v. United States*, 291 U.S. 293, 78 L.ed. 804, 54 S.Ct. 396.”

In the *Bedford Stone* case, 274 U.S. 37, the dissenting opinion of Mr. Justice Brandeis, concurred in by Mr. Justice Holmes, pointed out (p. 64) that in the *Brims* case

"the purpose of the combination was not *primarily* to further the interests of the union carpenters. The *immediate* purpose was to suppress competition with the Chicago manufacturers."

In the *Brims* case competition sought to be suppressed was all out-of-state competition and not, as here, mere y that portion which was based on inferior labor standard. Here the labor unions were not being used by the employers, as was certainly the case in *Local 167 v. United States*, 291 U.S. 293. Here, the agreement was one entered into as part of the collective bargaining process to protect labor standards in the Bay area. A suppression as wide and sweeping as that in the *Brims* case was held to be not illegal in the *Allen Bradley* case, *supra*.¹⁵

¹⁵The opinion of the court below states (144 Fed.(2d) at 550) that there was present in the charge in the instant case an element not present in the *Brims* case, to wit, "the enforcement of the employers' artificial and non-competitive price list, circulated to the trade and forced upon the consumer by the picketing and work-stoppages of the union." No such claim was ever made by the government in either court below, orally or in writing; and the court is simply mistaken. There is not a word in the indictment that any price list or prices were forced on consumers by picketing or work stoppages. There are references to picketing, but they relate to the enforcement of the rule against the working on and handling by laborers and employers of materials made under inferior labor standards. Nor was any proof of price lists offered.

CONCLUSION

It is respectfully submitted that Count One of the indictment states no offense, that the demurrers should have been sustained, and that the judgments of conviction should be reversed with direction to dismiss the indictment.

Dated: San Francisco, California, February 5, 1945.

MAURICE E. HARRISON,
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No. 11

8

In the Supreme Court of the United States

OCTOBER TERM, 1945

LUMBER PRODUCTS ASSOCIATION, INC.,
(a corporation), et al.,

Petitioners,

vs.

UNITED STATES OF AMERICA;

Respondent.

Brief of Lumber Products Association, Inc., et al.,
After Restoration of Cause to the Docket

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No. 11

In the Supreme Court of the United States

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Brief of Lumber Products Association, Inc., et al., After Restoration of Cause to the Docket

On June 18, 1945 the Court ordered this case and its companions, Nos. 9, 10, 12 and 13¹ restored to the docket and assigned for reargument, and it requested counsel to discuss in their briefs and upon oral argument certain questions. As we understand them, the questions appear to pertain to the parties in Cases 9, 10 and 12, and not to the issues in this case.

However, on the same day, June 18, 1945, this Court handed down its decision in the case of *Allen Bradley*

1. Respectively, Nos. 668, 666, 667, 674 and 675 in the October term, 1944.

Company, et al. v. Local Union No. 3, International Brotherhood of Electrical Workers, et al., Case No. 702, 324 U.S., 89 L. Ed. (Adv. Op.) 1441. That decision becomes a necessary point of departure in the further consideration of this case, but it still left certain basic questions unanswered.

We submit this brief in order to discuss the application of the *Allen Bradley* decision.

So far as they go, the principles there enunciated are, we submit, the very principles for which we contended in our brief filed here in February 1945, and confirm our position. We said in that brief (at p. 42), " * * * if the decision of the Circuit Court of Appeals for the Second Circuit is correct in the *Allen Bradley* case, the decision of the court below in the instant case is necessarily incorrect. On the other hand, the Circuit Court of Appeals in the *Allen Bradley* case may be in error, and still the decision of the court below in the instant case would be erroneous, for the *Allen Bradley* case is an infinitely stronger case for illegality than the present; * * *."

We submitted in our brief of February:

(1) That, under the labor statutes such as the Norris-La Guardia Act, the decisions establish that an agreement between labor elements alone, for selfish purposes, is *wholly immune* from the Sherman Act, although it restrains interstate commerce (Brief, p. 31);

(2) That a combination between labor and employers enjoys no such *absolute immunity* (Brief, p. 31); i.e., that the participation of employers suffices to destroy the absolute immunity;

(3) That, nevertheless, the mere fact that employers participate in the combination does not render the com-

combination illegal; while absolute immunity is gone, legality is to be tested by certain other factors, by judgments "regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end" and the like (Brief, pp. 31, 32). As we read the decision, this Court in the *Bradley* case has confirmed the correctness of each of these contentions.²

The next and crucial question is: How is the wisdom or unwisdom, the reasonableness or unreasonableness,—in short, the legality of the agreement,—to be determined?

This question, we submit, is not wholly answered by the *Bradley* decision. Agreements are not illegal merely because they restrain trade. Nor is an agreement restraining trade illegal merely because it does not find exemption in the immunizing provisions of the recent labor statutes. While this Court said in the *Bradley* case that "the exemptions granted the unions were special exceptions to a general legislative plan,"³ nevertheless we are not confined, in answering the fundamental question, to examining the subject of union immunities or to finding protection in some special exception to a general plan. We go to the general plan itself, and we may, we submit, examine the reasonableness of the combination under the "rule of reason"; and to that end we may look

2. Thus this Court said: "Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups." It did not say that the same labor union activities are or are not in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups. 89 L. Ed. (Adv. Op.) 1448 (2d col.).

3. 89 L. Ed. (Adv. Op.), p. 1448 (1st col.).

to the views of Mr. Justice Holmes, Mr. Justice Brandeis, and the present Chief Justice, expressed many years ago (see our brief of February 1945 at pp. 30 and 32).⁴

We submitted in our brief of February 1945 that the test must be an *objective* one. Any *subjective* test, despite any certainty that it may appear to have in its statement, will lead to complete confusion in practice, and it will be impossible, for anyone active in labor organization or in business, to apply it in determining the legality of proposed conduct.

We submit that the objective test can be nothing other than this: Whether the agreement or combination is or is not directly or rationally related to the improvement of working standards.

In the *Bradley* case this Court stated that the question there was "whether unions can with impunity aid and abet businessmen who are violating the [Sherman] Act."⁵ With the question so stated, the answer necessarily must be in the negative, as our brief of February 1945 frankly pointed out (pp. 44, 45, et seq.). But in the instant case, this statement of the issue only forces the question one step backwards, because the question still remains whether by the combination with labor the businessmen are in fact violating the Act.

4. As we said in our brief of February 1945 (at p. 30): "We submit, decision does not rest merely on any question whether a labor dispute exists or has ceased, or on any considerations of recent statutes. Quite independently of the decisions beginning with *United States v. Hutcheson*, supra, and of the statutes underlying those decisions, an agreement such as is here involved should be deemed legal, because it is not unreasonable."

5. 89 L. Ed. (Adv. Op.), p. 1447 (1st col.).

This Court in the *Bradley* case also stated and negatively answered⁶ the question whether unions may, consistently with the Sherman Act, aid non-labor groups to create business monopolies and to control the marketing of goods and services. That they may not do so we conceded in our brief of February 1945 (pp. 42 to 45), where we pointed out the fundamental differences between a case such as that and the present. But there is a converse question: whether non-labor groups may combine with unions to improve and protect labor standards. True, such combination may restrain trade, but it is recognized that the protection of labor standards may, without violation of the Sherman Act, result in or require restraints on the marketing of goods and services; that recognition is both explicit and implicit in the *Allen Bradley* case.⁷

We have submitted that no subjective test is feasible. Legality should not be determined by asking whether the business elements in the combination were induced to participate by the motive or the purpose of forwarding their own interests rather than by a motive of promoting the interests of labor. Such an inquiry will inevitably lead into a morass of speculations. All people act for their own interest; employers normally grant labor demands in order to be free of economic disadvantages that would flow from refusal.

If a subjective test were to control, two identical agreements producing the same results would be diversely legal and illegal, and the same agreement would be held legal or illegal, depending upon what a jury should read into

6. 89 L. Ed. (Adv. Op.), p. 1447 (1st col.).

7. Cf. 89 L. Ed. (Adv. Op.), p. 1448 (2d col.).

the minds of the defendant,—indeed, not the actual mind of any particular defendant, but the fictitious collective mind of a conspiracy wherein fragments of every participant's purposes and acts are added to those of others to make a composite guilt. To apply these observations: The agreement in the present case was simply that the employers would not handle, and labor would not work upon, materials produced under labor standards inferior to those created by the collective bargaining contract in which the provision was contained. That agreement unquestionably was directly and rationally related to the protection and improvement of labor standards. *In none of its briefs has the government ever disputed that fact.* No agreement between employers and unions, other than one merely fixing wages and working conditions between the contracting parties, could be more strictly confined to the protection of labor standards than the agreement of this case. In the *Allen Bradley* case this Court said:⁸

“Since union members can without violating the Sherman Act strike to enforce a union boycott of goods, it is said they may settle the strike by getting their employers to agree to refuse to buy the goods. Employers and the union did here make bargaining agreements in which the employers agreed not to buy goods manufactured by companies which did not employ the members of Local No. 3. We may assume that such an agreement standing alone would not have violated the Sherman Act.”

Now we submitted in our brief of February 1945 (at p. 22),

⁸ 89 L. Ed. (Adv. Op.), 1447 (2d col.).

"There can be no question of the exceptionally close relation between the protection of labor interests and a rule excluding from the local area materials produced under inferior labor standards. Such a rule has far closer connection with labor's ultimate end, than, for example, union and closed shop rules. The better reasoned decisions have always held that boycott rules and other conduct designated to enforce all union shops were legal and non-violative of the Sherman Act though interstate commerce was directly restrained, on the ground that unionization was reasonably related to the immediate and legitimate interest of preserving wages and working conditions * * *."

Clearly the present agreement is more closely related to preserving wages and working standards than one excluding goods produced by non-union shops, because a union shop is a means to an end and not the end. A union shop in another community may still have labor standards inferior to those locally prevailing, and a non-union shop may have standards equally high. In this case, if the goods were produced by a mill maintaining the standards of wages and working conditions embodied in the Bay Area collective bargaining agreement, the agreement did not prevent the purchase of or the performance of work on the goods, though they were obtained from a non-union shop either in or out of California; and, on the contrary, if the goods were produced in a mill with standards less favorable to labor than those in the Bay Area, the agreement excluded the goods though produced in California or in a union shop.

In the oral argument before this Court on March 13, 1945, the Honorable Wendell Berge, Assistant Attorney General, in contending that combinations such as the one

in this case are illegal "irrespective of whether they grow out of any labor dispute," said explicitly, "And it is immaterial who instigates the agreement." The Assistant Attorney General thus agreed with the position we had taken in our brief of February 1945 (at pp. 38, et seq.), that the source of the clause is irrelevant, and that the manner in which the clause found its way into the collective bargaining agreement, whether at the request of unions or employers, is not material to the question of its legality. We submit that Mr. Berge's contention that the agreement is illegal although imposed by the unions has been demonstrated to be unsound by the *Bradley* decision. We assume that it will now be conceded that, under that decision, there was no violation of the Sherman Act, if the defendant unions here imposed the non-handling clause on the employers because the handling of materials produced under inferior labor standards would necessarily break down local labor standards.⁹ We believe that is the implication, if not the holding, of the *Allen Bradley* case in the part of the opinion which is quoted at page 6 above. If, on the other hand, the unions did not impose the clause, but the employers requested it in order to enable them to grant the union's demands for higher wages and superior conditions,—as the government has contended;¹⁰—the relation of the clause to the protection and improvement of labor standards is precisely the same. Its effect on the public is the same, and its legality, we submit, is therefore the same. Legality of an agreement should not depend upon whether one or more of the employers be-

9. In fact, the condition was imposed on the employers and for just that purpose.

10. See our brief of February 1945 at pp. 42, et seq.

lieve that the agreement will serve his or their own interest as well, or forsooth, on whether a jury might so believe.

In his concurring opinion in the *Bradley* case, Mr. Justice Roberts stated his belief that "The situation created" by the holdings of this Court "is unreal," that "the law as announced by the court creates an impossible situation * * * and leaves commerce paralyzed beyond escape," and that "this Court, as a result of its past decisions, is in the predicament that whatever it decides must entail disastrous results." We submit that if the test of legality in the case of a combination in which employers participate is the objective test propounded above, Mr. Justice Roberts' observations lose much of their pertinence.

While we submit that the objective test is the correct test of legality of a combination involving employers and unions, even under a subjective test the agreement of the instant case would be legal. To contend that the economically weak and impoverished little businessmen,—the small mill operators,—in the present case were other than the tail of the dog in the Bay Area would be to advance a sardonic joke, and no one has ever advanced it. As we have noted, the government itself, although charging that the employers requested the clause, has said that they did so, not to obtain a monopoly or to maximize profits, but merely to enable them to pay the wage demands and to maintain the labor standards upon which the unions were insisting.

The difference between the facts of the present case and those of the *Allen Bradley* case is so wide as hardly to require discussion. As we pointed out in our brief of

February 1945 (at p. 41), in the *Bradley* case the agreement, not only in its basic purpose but in its necessary effect and by its express terms, excluded from New York City all out-of-state goods *per se*, without regard to the labor standards under which they were produced and without any possibility that out-of-state manufacturers could by any manner of compliance or acquiescence bring their goods into the city. And, according to this Court, the employer-employee agreements of the *Bradley* case "expanded into industry-wide understandings, looking not merely to terms and conditions of employment but also to price and market control."¹¹ In the present case (as we have pointed out in our brief of February 1945, pp. 9-12), the indictment does not charge price fixing; the government conceded this to be so, for it said (Government's Brief, February 1945, p. 39): "It is therefore unnecessary to consider whether the indictment is to be construed as charging 'price fixing'."¹² This Court also noted that in the *Bradley* case the combination between businessmen and employees "intended to and did restrain trade in and monopolize the supply of electrical equipment in the New York City area to the exclusion of equipment manufactured in and shipped from other states, and did also control its price and discriminate between its would-be customers."¹³

11. 89 L. Ed. (Adv. Op.), 1442 (2d col.); 1443 (1st col.).

12. As its reason the government stated that the indictment charged a conspiracy having the effect and purpose of raising prices, of a kind held illegal in *American Cotton & Lumber Co. v. United States*, 257 U.S. 377. But that contention is merely an argument from the fact that higher wages and superior labor standards, protected by an agreement such as is here involved, may mean higher prices to the public.

13. 89 L. Ed. (Adv. Op.), p. 1443.

We submit that had there never been a *Norris-La Guardia Act* and had *United States v. Hutcheson*, 312 U.S. 219, never been decided, the agreement in the present case would still be entirely legal because by any objective test it was rational and directly related to the improvement and protection of labor standards and was therefore not an unreasonable restraint.

At the same time the policy underlying that statute and that decision is pertinent. It was a commonplace that the reasonableness of the restraint of interstate commerce, not the mere fact of restraint, determined legality. But with respect to the significance of reasonableness there have been two opposite trends in more recent years. In cases of combinations involving labor alone, reasonableness has been abolished as a test, and the combination is legal though unreasonable. In cases involving only "capital", reasonableness as a test has not been abolished, but there has been a tendency to recognize less frequently that any particular restraint is reasonable. In a combination involving both labor and "capital", these two trends are in conflict. This Court remarked in the *Bradley* case that there is a conflict between the declared congressional policy which seeks to preserve a competitive business economy and the congressional policy which seeks to preserve the rights of labor to organize to better its condition through the agency of collective bargaining.¹⁴ The two policies must be reconciled, not merely verbally, but in operation. They can be reconciled by balance at the mean point, re-emphasis on reasonableness. "Reasonableness" is a standard of objective appraisal. And, in

14. 89 Ed. (Adv. Op.), p. 1446 (2d col.).

view of the fact that the congressional policy which seeks to preserve the rights of labor to organize to better its conditions is the later and more recently evolved policy, in determining reasonableness the balance-scale should be sensitive to the labor factors in the situation,—to the effect of the agreement on labor interests.

If, in determining what combinations between labor and employers are legal and what illegal, it is necessary to follow the traditional technique of picking out a line from case to case, we submit that the present case illustrates a clearly legal agreement, and that the case of *Albrecht v. Kinsella*, 119 F.(2d) 1003 (7 Cir.), illustrates an agreement which in the interstate field would be clearly illegal. The instant case, we submit, lies at the extreme end of the legal side of the spectrum.

It is respectfully submitted that the indictment states no offense, that the demurrers should have been sustained, and that the judgments of conviction should be reversed with direction to dismiss the indictment.

Dated: San Francisco, California, October 8, 1945.

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FILE COPY

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1944

No.

874

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9

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,

Petitioner,

VS.
UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Judicial Circuit
and
BRIEF IN SUPPORT THEREOF.**

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No.

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Judicial Circuit.

*To the Honorable Harlan Fiske Stone, Chief Justice
of the United States, and to the Honorable Associate
Justices of the Supreme Court of the United
States:*

Petitioner, Alameda County Building and Construction Trades Council, respectfully prays that a writ of certiorari issue to review a decision of the Circuit

Court of Appeals of the United States for the Ninth Judicial Circuit in the case of Lumber Products Association, Inc. (a corporation), et al., Appellants v. United States of America, Appellee, No. 10,011, dated August 23, 1944. (R. 1697.)

This case in the Circuit Court of Appeals was an appeal from a judgment on a verdict of guilty against certain defendants in the case of United States of America v. Lumber Products Association, Inc., et al., in the District Court of the United States for the Northern District of California, Southern Division, No. 26,977-S. A number of the defendants in the original suit against whom judgment of conviction was entered appealed to the Circuit Court of Appeals in the case above mentioned and on affirmance of the judgment against a number of the original defendants, these appellants, including the petitioner herein, seasonably petitioned for a rehearing, which petition was by said Circuit Court of Appeals for the Ninth Circuit denied.

This petition for writ of certiorari by the within petitioner, Alameda County Building and Construction Trades Council, is to some extent based on the same grounds urged by other petitioners herein and this petitioner relies upon each of the grounds, arguments and authorities presented by other petitioners herein.

**SUMMARY AND SHORT STATEMENT OF
THE MATTER INVOLVED.**

At the March Term, 1940, an indictment (R. 4-37) was filed in the United States Circuit Court for the Northern District of California, Southern Division, in the case above named and numbered, against the Lumber Products Association, Inc., and a group of employers in the cabinet shop industry in the San Francisco Bay area, also against a large number of labor unions and councils, including this petitioner, Alameda County Building and Construction Trades Council, the indictment charging violation of the Sherman Act, the first count being for restraint of trade, the second count, which was dismissed prior to trial, being for conspiracy to monopolize trade and commerce among the several states. The prosecution grew out of a labor dispute running over a period of years between the employers who were indicted and various unions and councils of the United Brotherhood of Carpenters and Joiners of America, including the United Brotherhood itself. The conspiracy charge consisted of certain language found in the contracts entered into between the employers and the various carpenters' organizations, all the details of which are fully set out in the petitions filed herein by the various carpenters' groups. (R. 28.)

This petitioner, Alameda County Building and Construction Trades Council, was not a party directly or indirectly to any of the agreements alleged to constitute a conspiracy or conspiracies.

The various contracts were put in evidence and showed no signature either as a party or by way of

approval or otherwise of this petitioner to any of the agreements. This petitioner was named in the indictment as a defendant and in general terms is alleged to have been one of the conspirators. In Section 17 (R. 19, 20) of the indictment it is alleged of this petitioner that:

"It is advisor to, supervisor of and governing body for Unions composed of laborers engaged in building and construction trades in the County of Alameda, California."

Not a syllable of evidence was offered to prove that this petitioner was such advisor, supervisor or governing body as alleged, nor was any evidence offered as to the composition, constitution, make-up or set-up of this Council other than a stipulation that it was "a voluntary unincorporated association". (R. 262-264.)

The only specific reference in the opinion of the Circuit Court of Appeals to the evidence concerning this petitioner consists of a single short paragraph as follows (R. 1688):

"The Alameda County Building and Construction Trades Council attacks the sufficiency of the evidence as to it in the same manner. We find ample evidence of the Council aiding in the enforcement of an agreement to exclude certain types of lumber and determining whether certain dealers should be placed on the unfair list for violating the agreements from which the jury could find participation in the conspiracy. The trial court did not err in refusing an instructed verdict for this appellant."

The evidence referred to in the above quoted paragraph consisted of statements made by certain individuals affiliated with this petitioner, Building Trades Council, expressing sympathy and in some instances cooperation with the boycott conducted by the carpenters' organizations. (R. 204, 205, 331-333, 338-342, 346-347.) But as stated above, there was no evidence showing any authority on the part of these individuals to make such statements or do such acts—in fact a complete lack of evidence of any authority on the part of anybody to speak for or represent this appellant Council in any capacity whatsoever.

STATEMENT OF JURISDICTION.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code. (28 U. S. C., Sec. 347(a).)

The judgment of the Circuit Court of Appeals was entered August 23, 1944. (R. 1697.) Petition for rehearing was presented within the time allowed therefor by rule of Court and thereafter duly denied on October 14, 1944. (R. 1698.) The mandate has been stayed until November 17, 1944, and thereafter until disposition of the matter by this Court. (R. 1699.)

THE QUESTIONS PRESENTED.

1. May an unincorporated association be held criminally liable under the Sherman Act for conspiracy, it not having been a party to the contract alleged to constitute the conspiracy?

2. May an unincorporated association be held criminally liable under the Sherman Act on account of things done by alleged officers or agents where there is no evidence as to the existence of such officers or agents or of their powers?

3. May an unincorporated association be held criminally liable under the Sherman Act for alleged acts of its officers and agents with no showing of either previous authorization or subsequent ratification of such acts?

4. Is an agreement between labor unions and employers to refuse to work on material produced under a lower wage scale than that enjoyed by the unions illegal under the Sherman Act?

5. Is such boycott if carried on peacefully and honestly protected by the provision of the Clayton Act?

6. Is such boycott if carried on peacefully and honestly protected by the provisions of the Norris-La Guardia Act?

7. Is such boycott protected by the terms of the Clayton and Norris-La Guardia Acts only so long as it does not restrain commerce between the several states?

8. Is such protection by the Clayton and Norris-La Guardia Acts confined to cases not involving interstate commerce?

9. Is such a boycott peacefully and honestly carried on protected by the First Amendment to the Federal Constitution?

REASONS FOR ALLOWANCE OF THE WRIT.

1. The above mentioned decision by the Circuit Court of Appeals for the Ninth Circuit, holding a peaceful boycott unlawful under the Sherman Act is in direct conflict with a decision of the Circuit Court of Appeals for the Second Circuit handed down October 12, 1944 in *Allen Bradley Co. v. Local Union No. 3 I. B. E. W.* In view of this conflict, this Court should settle the law on this important question.

2. The writ should be granted in order that this Court may have the opportunity to reaffirm the rule laid down in the *Coronado* cases (259 U. S. 344 and 268 U. S. 295) to the effect that an unincorporated labor organization may be held liable only for acts of its officers or agents previously authorized or subsequently ratified.

3. The decision in the case at bar is at variance with the rule in the recent decisions of this Court in *Apex Hosiery Co. v. Leader*, 310 U. S. 469, *U. S. v. Hutcheson*, 312 U. S. 219, *U. S. v. International Hod Carriers*, 313 U. S. 539, and *U. S. v. American Federa-*

tion of Musicians, 318 U. S. 741, all of which decisions held such boycotts to be immunized by the statutes above mentioned.

4. This Court has held that labor union activity against business concerns deemed by the union to be unfair is protected against attempted prohibition by state statute or state policy by the terms of the First Amendment to the Federal Constitution: *Senni v. Tile Layers*, 301 U. S. 468; *Thornhill v. Alabama*, 310 U. S. 88; *Carlson v. California*, 310 U. S. 296; *Milk Wagon Drivers v. Meadowmoor*, 312 U. S. 287; *Swing v. A. F. of L.*, 312 U. S. 321; *Bakery and Pastry Drivers v. Wohl*, 315 U. S. 769, and under the Sherman Act, in the concurring opinion of Chief Justice Stone in *U. S. v. Hutcheson*, 312 U. S. 219. This Court should decide whether the Bill of Rights of our Federal Constitution is not also paramount over acts of Congress such as the Sherman Act.

5. This Court, having held that these constitutional rights may be peacefully and honestly exercised in the presence of attempted prohibition by the state, should now hold that attempted congressional prohibition must be limited to acts not thus protected by the Bill of Rights.

PRAYER.

Wherefore, petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals of the United States for the Ninth Judicial Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of all proceedings in the case entitled Lumber Products Association, Inc., Appellant v. United States of America, Appellee, and being No. 10,611 of the records of said Court, in the end that said cause may be reviewed and determined by this Honorable Court as provided by the statutes of the United States, and for such other and further relief as may be proper.

Dated, San Francisco, California,
November 8, 1944.

GUY C. CALDEN,
Counsel for Petitioner.

CLARENCE E. TODD,
Of Counsel.

CERTIFICATE.

We hereby certify that in our judgment the foregoing petition is well founded and that it is not interposed for delay.

Dated, San Francisco, California,
November 8, 1944.

GUY C. CALDEN,

Counsel for Petitioner.

CLARENCE E. TODD,
Of Counsel.

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1944

No.

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF JURISDICTION.

As pointed out in the foregoing petition the statutory provision which sustains the jurisdiction of this Court in the instant matter is Section 240(a) of the Judicial Code. (28 U. S. C., Section 347(a).)

The judgment of conviction in the trial Court was entered December 20, 1941 (R. 1366, 1373, 1375, 1390), under an indictment charging violation of Section 1

of the Sherman Anti-Trust Act, 15 U. S. C., Section 1. (R. 4.)

The opinion of the Circuit Court of Appeals in this case was dated and filed on August 23, 1944, but is not at this date reported in the Federal Reporter, second series. The opinion appears in full at pages 1674 to 1696 of the record.

Petition for rehearing was filed September 22, 1944, within the time allowed therefor by rule of Court and was denied on October 14, 1944. (R. 1698.)

STATEMENT OF FACTS.

The facts in this case, particularly as regards this petitioner, are found in the "Summary and Short Statement of the Matter Involved", which is contained in the foregoing petition. The facts may be further summarized as follows: the indictment (R. 4 to 37) charged certain Unions and Councils, officers and members of the Brotherhood of Carpenters and their employers, certain business concerns in the cabinet shop industry in the San Francisco Bay area and individual defendants with a conspiracy to violate the Sherman Act by inserting in the collective bargaining agreement the following language:

"* * * no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by saw mills, mills or cabinet shops or their distributors that do not conform to the rates of wage and

working conditions of this agreement." (Except certain named items.) (R. 28.)

This petitioner, Alameda County Building and Construction Trades Council, is not an organization of carpenters, nor of their employers. This petitioner was not a party to any agreement containing the said language or to any agreement whatever referred to in the indictment or in the evidence. The sole contention of the prosecution as to the guilt of this petitioner was that certain acts and things were done by certain alleged agents of petitioner. (See Opinion of the Circuit Court of Appeals, R. 1688, and Brief for Appellee in the Circuit Court of Appeals, pages 111 to 115.) There was no attempt made by the Government to offer evidence of the constitution and by-laws, rules or regulations of this petitioner, of the existence of officers or agents or of their authority.

The crime of which this petitioner and other defendants were convicted apparently consisted first of the execution of this agreement (to which this petitioner was not a party), and of a boycott with picket lines directed at the material indicated by the portion of the agreement above quoted to be "unfair". And it is the contention of this petitioner that such of the acts charged as were actually proven are expressly immunized by the Clayton Act (29 U. S. C. 52) and the Norris-La Guardia Act (29 U. S. C. 101-115) and that these acts constituted the exercise of constitutional rights protected by the First Amendment to the Federal Constitution.

SPECIFICATION OF ERRORS RELIED UPON.

1. The Circuit Court of Appeals erred in affirming the judgment of conviction against this petitioner in the absence of any evidence or contention on the part of the Government that this petitioner was a party to any of the allegedly unlawful agreements, and in the absence of any showing whatever of authority of any agents of this petitioner to do or say the things actually proven.

2. The Circuit Court of Appeals erred in holding that the agreement above referred to constituted a conspiracy under the terms of the Sherman Act.

3. The Circuit Court of Appeals erred in holding that the boycott and picketing directed at material deemed unfair by the unions because it was produced under lower wage scales, was a violation of the Sherman Act.

4. The Circuit Court of Appeals erred in denying the immunity of such boycott and picketing under the terms of the Clayton Act and the Norris-La Guardia Act.

5. The Circuit Court of Appeals erred tragically in holding, in effect, that the protective provisions of the Clayton Act and the Norris-La Guardia Act were ineffective and void in the presence of any restraint of interstate commerce.

6. The Circuit Court of Appeals erred in holding, in effect, that the protective provisions of the Clayton Act and of the Norris-La Guardia Act were eliminated

and circumscribed by the Sherman Act, as if the Sherman Act were a later enactment which excluded all cases involving restraint of trade from the protection of the Clayton Act and of the Norris-La Guardia Act.

7. The Circuit Court of Appeals erred in ignoring the provisions of the First Amendment to the Federal Constitution and the many decisions of this Court allowing the protection of those provisions to boycott and picketing by labor unions under circumstances comparable to those at bar.

ARGUMENT.

A. THE WRIT OF CERTIORARI SHOULD ISSUE IN ORDER THAT THIS COURT MAY RECONCILE OR ADJUDICATE BETWEEN THE DECISION OF THE NINTH CIRCUIT COURT IN THIS CASE AND THE DECISION BY THE SECOND CIRCUIT COURT IN ALLEN BRADLEY v. ELECTRICIANS.

A very general examination of the facts in the case at bar, together with those in the decision in the Second Circuit on October 12, 1944, discloses that the two cases are essentially on all fours. (The *Allen Bradley* decision is not yet published in the Federal Reporter, second series, but the decision is set out in full in the advance sheets of Volume 15 of the Labor Relations Reporter, from page 214 to page 219, both inclusive.) Each involved a boycott of material deemed unfair because produced under different working conditions. (See the first paragraph of the *Allen Bradley* decision.) In the *Allen Bradley* case the Court held, and

we think correctly, that this boycott is immunized by the provisions of the Clayton Act and also by the Norris-La Guardia Act. In fact these acts were passed with the provisions of the Sherman Act clearly in the mind of the Congress, and the provisions of the Sherman Act have been denied application by this Court in many recent cases involving peaceful boycott and peaceful picketing as in the case at bar. (*Apex Hosiery Co. v. Leader*, 310 U. S. 469; *United States v. Hutcheson*, 312 U. S. 219.)

The law with relation to controversies such as the one at bar and the one giving rise to the Allen Bradley decision is not yet entirely clear, although it is clearing, and this Court has held that the interpretation of the Sherman Act is being worked out from case to case. (*United States v. Hutcheson*, supra, at page 230; *Apex Hosiery Co. v. Leader*, supra, at 489.)

B. THIS PETITION SHOULD BE GRANTED IN ORDER THAT THIS COURT MAY RE-EXAMINE AND REAFFIRM OR OTHERWISE DISPOSE OF THE RULE IN THE CORONADO CASES WITH REGARD TO THE LIABILITY OF UNINCORPORATED LABOR ORGANIZATIONS UNDER THE SHERMAN ACT.

In the first and second *Coronado Coal Company* cases, 259 U. S. 393 and 268 U. S. 300, this Court refused to hold the United Mine Workers guilty in a civil suit for conspiracy to violate the Sherman Act, although the activity of the president of the Association, in fact, the actionable participation by the president in the carrying out of the conspiracy was at least

as clearly shown, as any acts of supposed agents of this petitioner in the case at bar, and yet this Court held that while the president might be liable personally, his activity could not bind the Association of which he was a member and president, without the clear proof of authorization or of ratification of the wrongful acts. (See second *Coronado* case, 268 U. S., at page 304.)

C. THE WRIT OF CERTIORARI PRAYED FOR IS NECESSARY IN ORDER THAT THIS COURT MAY REAFFIRM THE RULE AS TO THE RIGHTS OF LABOR UNIONS UNDER THE CLAYTON AND NORRIS-LA GUARDIA ACTS.

This Court in the *Hutcheson* case, *supra*, recognized what had been made evident "both by powerful judicial dissents and informed lay opinion" (312 U. S. 219 at 231), that the immunization or withdrawal of certain peaceful labor union conduct from the general interdict of the Sherman law contained in the language of the Clayton Act was not recognized by the Courts between the passage of the Clayton Act and the passage of the Norris-La Guardia Act and that it is only since the passage of the Norris-La Guardia Act that the lawfulness of these labor union activities specified in the Clayton Act and again referred to in the Norris-La Guardia Act have been recognized to be without the scope of the Sherman Act. The *Duplex* case, 254 U. S. 443, the *Brim's* case, 272 U. S. 549, and the *Bedford Cutstone* case, 274 U. S. 37, must all be read now with this realization in mind. The *Apex* and *Hutche-*

cases, *supra*, showed clearly that normal peaceful activities of a labor union in its own interest for the protection of its wage scale and working conditions are precisely the acts referred to and withdrawn from the general interdict of the Sherman law, originally, by the Clayton Act, and, because of the erroneous view of the Courts, made clear and definite by the language of the Norris-La Guardia Act.

The constitutional protection of these labor union activities will be referred to shortly, but for the moment it is our intention to reiterate what this Court has so often said in recent years, namely, that these union activities are by statutory definition and mandate excluded from the prohibitions of the Sherman Act.

Now when we read the opinion of the Circuit Court of Appeals, of which we seek review by this petition for certiorari, we find that the attitude of that Court is that the Sherman Act in some way puts a limitation on the terms of the Clayton and Norris-La Guardia Acts. The reasoning of the Circuit Court of the Ninth Circuit and of the learned District Judge who tried the case, was that no act of a labor union, no matter how clearly immunized by the Clayton Act or the Norris-La Guardia Act, was lawful if it actually caused or contributed to a restraint of interstate commerce. That seemed to be the touch-stone used by both Courts to determine whether union conduct was or was not under the ban of the Sherman Act, namely, did it contribute to a restraint of interstate commerce?

Such, however, was not the intent of the Congress in passing the Clayton Act and the Norris-La Guardia Act, and such was not the understanding of this Court in the *Apex* and *Hutcheson* cases and in more recent pronouncements. The Congress understood and this Court understands that the intent of those statutes is to protect labor unions in peaceful activities in their own interest.

In the opening paragraphs of the opinion here sought to be reviewed (R. 1676), the Circuit Court recited from the indictment as follows:

"It was further alleged that in 1936 the union group demanded an increase in wages. This demand was acceded to by the manufacturer group"

and then on the next page (R. 1677), it appears that the contract by which the manufacturer group "acceded to" the demand for the increase in wages contained this language, the use of which constitutes the crime for which these defendants were convicted:

"* * * no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or other distributors that do not conform to the rates of wage and working conditions of this agreement."

The Circuit Court then concludes that this language in a contract allowing increase in wages to the union defendants actually contributed to a diminution of interstate commerce, according to the language of the indictment, and the Circuit Court holds that these

defendants were properly found guilty of the crime of conspiring to restrain interstate commerce. There is not a single overt act alleged in the indictment or actually proven by the evidence which is not found within the protective clauses of the Clayton Act, and the Norris-La Guardia Act, but because these acts were done *after* an agreement with the employers had been consummated, rather than *before* such agreement and pursuant to demands for the execution of such an agreement, these immunized acts become criminal, according to the reasoning of the Circuit Court of Appeals.

In other words, the theory of the decision is that it was entirely proper for the labor organizations to *demand* an agreement under which they should not be required to work on any material or article produced under lower wage and working conditions, and that pursuant to such demand, they might boycott all such unfair material, but the moment they were *successful* in obtaining a contract with the employer for improved wages and working conditions, with a stipulation releasing them from the obligation to work on materials or articles produced under lower scales, then they immediately become criminals under the terms of the Sherman Act. Incidentally, according to this theory, the employers also become criminals. We have the strange situation of innocent acts on the part of the union, namely, making demands upon their employers, and the presumably equally innocent act of their employers in refusing to accede to the demands, but the moment the employers agree to these innocent

demands, both employers and workers become criminals under the Sherman Act. One would expect to find some wrongful act interjected into the situation at some point to make these workers criminals the moment they were successful in obtaining better wages, but no wrongful or immoral act is found anywhere in the situation. The thing that turns the law-abiding workers (and employers also) into criminals is the mere fact of agreeing upon demands and stipulations hitherto recognized as entirely lawful.

The reasoning of the Circuit Court of Appeals on this point is found on page 1677 of the record. At the top of the page the reference is to "this agreement" and "a written contract" between the parties, but two paragraphs further on, we find that this same meeting of the minds has become a "combination" to restrain interstate commerce.

Now, in view of the undoubtedly drastic language of the Sherman Act, condemning "any" restraint of interstate commerce, if the Clayton Act and Norris-La Guardia Act had been passed without any reference to the Sherman Act, it might be conceivable that Congress had passed the latter legislation without having the Sherman Act in mind, so that it would be possible to say that the language of the Clayton Act and of the Norris-La Guardia Act, immunizing demands by workers for better wages and conditions, and peaceful economic pressure pursuant to such demands, were not meant to include any such demands or economic action resulting in a restraint of interstate commerce. But we find that the Clayton and

Norris-La Guardia Acts were passed for the direct purpose of amending the Sherman Act and immunizing these peaceful activities from the penalties of the Sherman Act, which, of course, means that it was recognized by Congress that such peaceful labor union activities might cause a restraint of trade.

The Circuit Court of Appeals seems to argue seriously that a boycott by labor of materials deemed by them to be unfair is lawful only so long as they are in a dispute with their employers, but becomes illegal and criminal the moment of the consummation of an agreement between themselves and their employers.

But this theory is answered by the Supreme Court in unmistakable language in the *Apex Hosiery* case at 310 U. S., page 503, where the Court, after pointing out that:

"Strikes or agreements not to work, entered into by laborers to compel employers to yield to their demands, may restrict to some extent the power of employers who are parties to the dispute to compete in the market with those not subject to such demands"

but that this union activity would not be in violation of the Sherman Act, the Court goes on to say:

"Furthermore, *successful union activity*, as for example *consummation of a wage agreement with employers*, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards."

D. SUBSTANTIALLY THE SAME ACTS IMMUNIZED BY THE CLAYTON AND NORRIS-LA GUARDIA ACTS ARE ALSO PROTECTED BY THE BILL OF RIGHTS AND IN PARTICULAR BY THE FIRST AMENDMENT TO THE FEDERAL CONSTITUTION.

In the *Hutcherson* case this Court held that labor activity by way of boycott and picketing is not in violation of the Sherman Act, even though it actually causes a restraint of trade, on the ground that such acts are protected by the Clayton Act and the Norris-La Guardia Act. Mr. Justice (now Chief Justice) Stone, at page 243 of 312 U. S., said:

"the publication, unaccompanied by violence, or a notice that the employer is unfair to organized labor and requesting the public not to patronize him is an exercise of the right to free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress. See *Thornhill v. Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093."

The language of the Chief Justice brings together the two lines of decision of this Court, the one protecting peaceful boycott and peaceful picketing from the penalties of the Sherman Act and the other line holding that such activities in a dispute "deemed by them to be relevant to their interests" are protected by the provisions of the Bill of Rights (*American Federation of Labor v. Swing*, 312 U. S. 321 at 326.)

In the case of *Thornhill v. Alabama*, supra, this Court invalidated a statute of the State of Alabama which sought to make it unlawful to "go near to or loiter about the premises" of a person or concern under boycott by the union, to prevent other persons

from dealing with that person, or for "hindering, delaying, or interfering with, or injuring the lawful business or enterprise of such person"; pages 661 and 667.

Now if we look at the provisions of the Clayton Act cited by this Court in the *Hutcheson* case, we find that no injunction can issue to prevent the workers in a labor dispute

"from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or abstain from working; or from ceasing to patronize or employ any party to such dispute, or from recommending, advising, or persuading others by peaceful or lawful means so to do."

It will be noted that the acts immunized by Section 20 of the Clayton Act are the same acts which are protected under the Bill of Rights by the decision in the *Thornhill* case, *supra*.

A writ of certiorari in this case should issue in order that the Court may definitely integrate these two lines of decision, the *Apex Hosiery Co. v. Leader*, *United States v. Hutcheson*, *United States v. American Federation of Musicians*, all *supra*, and *United States v. Carrozzo*, 37 Fed. Supp. 191, affirmed 61 S. Ct. 839, and other cases, holding peaceful boycott and peaceful picketing to be free from the pains and penalties of the Sherman Act because of the protection afforded by the Clayton and Norris-La Guardia Acts

and the other line of decision, *Senn v. Tile Layers*, *Thornhill v. Alabama*, *Carlson v. California*, *A. F. of L. v. Swing*, *Bakery Drivers v. Wohl*, all supra, and *Cafeteria Employees Union v. Angelos*, 64 S. Ct. Reporter 126, and other cases upholding these same activities in cases not involving interstate commerce, as being the exercise of constitutional rights. Mr. Chief Justice Stone in his concurring opinion in the *Hutcheson* case, cited supra, has pointed out the way, and this opinion should be definitely and clearly reaffirmed by this Court.

Petitioner respectfully submits that a writ of certiorari should issue.

Dated, San Francisco, California,
November 8, 1944.

Respectfully submitted,

GUY C. CALDEN,

Counsel for Petitioner.

CLARENCE E. TODD,
Of Counsel.

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In the Supreme Court

OF THE
United States

OCTOBER TERM, 1944

No. 674

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,

VS.

UNITED STATES OF AMERICA,

Appellant,

Respondent.

BRIEF OF APPELLANT:

ALAMEDA COUNTY BUILDING AND CONSTRUCTION
TRADES COUNCIL.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No. 674

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

BRIEF OF APPELLANT,
ALAMEDA COUNTY BUILDING AND CONSTRUCTION
TRADES COUNCIL.

I.

JURISDICTION.

This Appeal, like the other Appeals from the judgments herein which are presented by other briefs, is an appeal from a judgment of conviction dated December 20, 1941 (printed record, Volume III, pages 1366 to 1368) under an indictment charging violation of Section 1 of the Sherman Anti-Trust Act, 15 U. S. C.,

Section 1 (R. Vol. 1, page 4, ff.). The jurisdiction of the District Court comes under 28 U. S. C., sec. 41, subdivision (2). The jurisdiction of the Circuit Court of Appeals was under 28 U. S. C., sec. 225, and was invoked by notice of appeal served and filed December 26, 1941. (R. Vol. IV, pages 1411 to 1415.)

The case is now before this Court after Writ of Certiorari granted, pursuant to the decision of the Circuit Court of Appeals for the Ninth Circuit which affirmed the judgment against the labor organizations and certain individual defendants. (144 Fed. (2d) 546.)

II.

STATEMENT OF THE CASE AND ISSUES AS TO THIS APPELLANT-DEFENDANT.

This case required five weeks for trial before a jury and the evidence covers many hundreds of pages. The story of the transactions sued upon is not presented in chronological order. This Appellant, Alameda County Building and Construction Trades Council, was indicted along with many other labor organizations for having entered into an "unlawful combination and conspiracy" to violate the Sherman Act and for having performed certain unlawful acts pursuant thereto.

The Alameda County Building and Construction Trades Council is mentioned specifically in paragraph 17 of the indictment, pages 19 and 20 of the printed record, and is alleged to be "a voluntary unincorporated association of individuals". It is also charged

in that paragraph with being "advisor to, supervisor of, and governing body for unions composed of laborers engaged in building and construction trades in the County of Alameda, California." Its membership as alleged in that paragraph, "consists of delegates from the affiliated local unions".

The evidence by way of stipulation is that this Appellant is "a voluntary unincorporated association", R. 262, 264. Pursuant to subpoena this Defendant presented its records in Court, and Charles R. Gurney, Secretary-Treasurer, was interrogated thereon. The Charter of the Council was presented as Exhibit No. 102 for identification; No. 104 for identification is a mimeographed copy of the minutes; No. 105 for identification is a communication from the Millmen's Union to the said Appellant; and folders marked 106 and 107 contain minutes of the San Francisco Building and Construction Trades Council received weekly by this Appellant Council.

It was stipulated as to all Defendants that documents might be presented and read in whole or in part but that only those portions actually read to the jury should be in evidence. (R. pp. 211-212.) Neither the Constitution or By-Laws of this Appellant were read in evidence. The record contains evidence of certain things done by Mr. Gurney, the Secretary (R. pp. 204-205, 332-333), and by Charles Roe, Assistant Business Agent (R. pp. 344-346), and by the board of business agents (R. pp. 331-332, 338-342, 346-347), but as stated, there is no evidence of the authority conferred on any officer or agent of the Council. At page 205, it appears affirmatively from the testimony of

Mr. Gurney that Mr. Roe, the Business Agent, had never, as far as Mr. Gurney could recall, been instructed to negotiate any labor contract.

At page 929, Vol. II, of the record it appears that when the carpenters' unions became affiliated with this Building Trades Council, the carpenters reserved "our right to negotiate our own agreements."

This constitutes the evidence specifically directed to this Defendant. The record shows from the testimony of many witnesses and from the production of documents that the Carpenters' unions and the Bay Counties District Council of Carpenters, Defendants herein, entered into a number of agreements with employers and employer groups relating to wages, hours and working conditions. These agreements will be discussed in great detail in the briefs of other Defendants, but not a single one of these agreements was negotiated directly or indirectly by this Appellant. (R. p. 944, Vol. II), nor does the signature of this Appellant appear on any one of the agreements.

Under this state of the evidence, the issues as to this Appellant, Alameda County Building and Construction Trades Council are:

First: Whether this Council was a party to any of the agreements alleged to constitute the conspiracy herein, or is shown to have committed any unlawful act.

Second: Whether any of the combinations or agreements or acts done by any of the labor Defendants constitute violations of the Sherman Act.

Third: Whether the acts charged against these Appellants are protected by the Bill of Rights of the Federal Constitution.

This Appellant along with the other labor Defendants demurred to the indictment (R. p. 42); demanded a Bill of Particulars (R. p. 1222); moved to dismiss because of the insufficiency of the indictment to state an offense (R. pp. 140, 141); concurred in the requests for instructions as presented by other labor Defendants (R. p. 1171); proposed certain instructions on its own behalf (R. p. 1193); moved for a new trial (R. p. 1209); the rulings in all of the above being adverse to this Appellant.

III.

ARGUMENT

A. THIS APPELLANT COULD NOT HAVE BEEN GUILTY OF A CONSPIRACY CONSISTING OF WRITTEN AGREEMENTS TO WHICH THIS APPELLANT WAS NOT A PARTY DIRECTLY OR INDIRECTLY.

In the Opinion of the Circuit Court of Appeals; affirming the judgment of the District Court, at 144 Fed. 2d page 552, bottom of column 1 and top of column 2, the Court said:

"The Alameda County Building and Construction Trades Council attacks the sufficiency of the evidence as to it in the same manner. We find ample evidence of the Council aiding in the enforcement of an agreement to exclude certain types of lumber and determining whether certain dealers should be placed on the unfair list

for violating the agreements from which the jury could find participation in the conspiracy. The trial court did not err in refusing an instructed verdict for this appellant."

It will be noted that the Court expressly refrains from stating that this Appellant was a party to any of the agreements alleged to have been unlawful. We appeal to the entire record to support our contention that there was no such evidence, and we challenge attorneys for the Government to point out any evidence that this Appellant signed any of the agreements or even that it gave its "approval".

The position of this Appellant is largely parallel to that of the Appellant, United Brotherhood of Carpenters and Joiners of America, whose briefs are on file and whose argument will be presented orally to this Court. The United Brotherhood was not a party to any of the contracts, although it may have given its approval to them, or some of them, which this Appellant, Alameda County Building Trades Council, never did. We refer to, approve, adopt and incorporate herein, so far as possible, as arguments on behalf of this Appellant, all the arguments presented and to be presented by the United Brotherhood of Carpenters and Joiners of America, particularly to the point that the evidence herein is completely insufficient to hold either of these associations criminally liable as a participant in the alleged conspiracy.

B. THE ACTS CHARGED AGAINST THIS APPELLANT ARE NOT ONLY PROTECTED AGAINST CRIMINAL PROSECUTION BY THE CLAYTON AND NORRIS-LA GUARDIA ACTS, BUT ALSO BY THE BILL OF RIGHTS OF THE FEDERAL CONSTITUTION.

It will be noted from the portion of the Opinion of the Circuit Court of Appeals quoted above, that this Appellant is held criminally liable only because of "aiding in the enforcement of an agreement to exclude certain types of lumber and determining whether certain dealers should be placed on the unfair list for violating the agreements. * * *"

• 144. Fed. (2d) at page 552.

The only overt acts charged against Appellants for the "enforcement" of the agreement, consisted of peaceful picketing. The Circuit Court of Appeals also mentions "determining whether certain dealers should be placed on the unfair list" as unlawful on the part of this particular Appellant.

Now there would seem to be no question that the acts charged against Appellants here come within the protective clauses of the Norris-La Guardia Act, U. S. Code, Title 29, section 104; although the Government contends that these acts so immunized by the Norris-La Guardia Act are in turn deimmunized by the penal provisions of the Sherman Act. It is our contention that if there is any actual conflict between the two statutes, the Norris-La Guardia Act, of course, must prevail, being later in time, but we wish to advance another argument in favor of the rights of Appellants in this labor dispute to the normal, peaceful activities of labor unions in labor disputes—that is, to refuse to work on substandard material, to urge their fellows

not to work and to advertise to the public in normal peaceful ways of such decision on their part. We contend that regardless of the express language of the Norris-La Guardia Act, protecting these rights of labor in labor disputes, these Acts have long been recognized as within the protection of the Bill of Rights, and in particular of the First Amendment to the Federal Constitution.

In *United States v. Hutcheson*, 312 U. S. 219, which was a prosecution of labor unions and individuals under the Sherman Act, because of a strike and a boycott, in which this Court held that the activities did not constitute a violation of the Sherman Act, Mr. Justice, now Chief Justice, Stone said in his concurring opinion, at page 243:

"the publication, unaccompanied by violence, of a notice that the employer is unfair to organized labor and requesting the public not to patronize him is an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress. See *Thornhill v. Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093."

In *Senn v. Tile Layers*, 301 U. S. 468, not a Sherman Act case, but a case involving the right of peaceful picketing and the construction of a statute of the State of Wisconsin, with regard thereto, this Court said at page 478:

"Members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

Now it is earnestly submitted that if peaceful picketing is a constitutional right, which this Court has over and over declared it to be, then no statute, State or National, can make it unlawful. In *Thornhill v. Alabama*, 310 U. S. 88, this Court set aside a Statute of the State of Alabama which sought to prohibit this particular form of the exercise of free speech.

In *Carlson v. California*, 310 U. S. 296, this Court in a companion case to the one last mentioned, struck down a county ordinance from the State of California, containing a similar ban against peaceful picketing, and the ruling of this Court was on constitutional grounds.

In *Swing v. American Federation of Labor*, 312 U. S. 321, this Court reversed an injunction and expressly disapproved the policy of the State of Illinois not, however, expressed in a statute, but basing its decision on the same ground, namely, that the right of peaceful picketing, even in the absence of what in Illinois practice was considered to be a labor dispute, was protected by the Bill of Rights. The Court said at page 326:

"The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state."

In *Bakery and Pastry Drivers v. Wohl*, 315 U. S. 769, this Court similarly disapproved an injunction against a secondary boycott arising out of a labor dispute, although the injunction was in accord with

the policy of the State of New York as expressed in the New York Statutes. This Court did not invalidate or annul the statute, but merely provided that constitutional rights must be protected regardless of any language of a statute or of any feature of the state practice which might seem to be contrary.

C. THE CONSTITUTIONAL RIGHT OF FREE SPEECH CONTROLS AND SUPERSEDES STATUTORY ENACTMENTS WHERE THE SAME MAY BE IN CONFLICT.

The constitutional provision protecting the right of free speech as expressed in peaceful picketing should be applied in the case at bar. It will be noted that Chief Justice Stone, in the language cited above in the *Hutchinson* case, indicated that this constitutional right can readily be protected within the framework of the Sherman Act as written, that is to say, without any holding that any part of the Act is unconstitutional.

Similarly, in *Bakery and Pastry Drivers v. Wohl*, 315 U. S. 769, this Court had no difficulty in protecting the right of the Bakery Drivers to conduct a boycott of an unfair product which right of boycott was assailed under the New York statute, by holding that the New York Court was in error in believing that, under the terms of the New York Act, no labor dispute could exist without a controversy between an employer and his actual employees; at 315 U. S. 769 at 774, this Court said:

"* * * one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive."

The conception of this Court of the controversy in the *Wohl* case is further explained by a portion of a paragraph from the case of *Carpenters v. Ritter's Cafe*, 315 U. S. 722, where this Court said, at page 727:

"The dispute there related to the conditions under which bakery products were sold and delivered to retailers. The business of the retailers was therefore directly involved in the dispute. In picketing the retail establishments the union members would only be following the subject matter of their dispute."

All that Defendants were doing in the case at bar was what the *Wohl* case Defendants were doing, that is, following the subject matter of the dispute, the substandard material, produced either in or out of California, under lower wage scales. To be sure, the dispute was not between all the workers on one side and all the employers on the other, it was between these A. F. of L. carpenters and all the employers and others who handled the substandard goods, a complete parallel to the *Wohl* case controversy.

To say that this effort to protect labor standards was laudable and legal so long as all the employers resisted the effort, but became a criminal offense as

soon as peace was declared between employers and employees, is as if the Constitution of the Peace Organization which is to follow this war, should be confined to methods of making war, with no encouragement or assistance to the processes of Peace.

This effort of these workers to protect their wage standards, is in exact accord with the public policy of America as expressed in the Fair Labor Standards Act and in Minimum Wage and Prevailing Wage legislation throughout the country. This type of legislation, both Federal and State, has been approved over and over again and there is no question that the protection of labor standards by law is now the established policy in America.

Where workers and employers are following the established public policy of the nation, it is unthinkable that they should be held criminally liable for such acts and conduct.

This Court, without in any way questioning the constitutionality of the Sherman Act, can and should rule, according to the concurring opinion of Chief Justice Stone in the *Hutcheson* case, cited supra, that the constitutional right of these appellants, one and all, to publicize the fact that certain materials in the San Francisco Bay area, whether manufactured in the area or brought in from another state, was substandard and therefore unfair, was and is protected by the First Amendment to the Federal Constitution.

It is only where statutory enactments have had for their sole purpose the abridgment of constitutional

rights that this Court has found it necessary to annul the statute completely. Such statutes and municipal ordinances were considered in *Thornhill v. Alabama*, *Carlson v. California*, and in the group of cases reported under the name of *Schneider v. State*, 308 U. S. 147, involving ordinances of New Jersey, California, Wisconsin and Massachusetts.

The Sherman Act, having been held constitutional as a means of regulation of interstate commerce, should continue to be enforced so long as it remains on the statute books, but neither this nor any other legislative enactment can, under the plain provisions of the First and Fourteenth Amendments, abridge these constitutional rights.

D. ALL METHODS OF THE EXERCISE OF FREE SPEECH ARE FACETS OF THE SAME PRINCIPLE.

It is significant that the First Amendment protects the right of freedom of religion, free speech, free press, freedom of assemblage and freedom of petition, not only in the same section, but in the same sentence, in fact, in the same clause, as follows:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.”

Therefore, this Court has considered all these rights as interdependent, and in cases involving one of the

rights has very frequently relied on decisions which have upheld one or more of the other rights. This Court, in *Milkwagon Drivers v. Meadowmoor Dairies*, 312 U. S. 287 at 293, stated the situation in this language:

“* * * The whole series of cases defining the scope of free speech under the Fourteenth Amendment are facets of the same principle in that they all safeguard modes appropriate for assuring the right to utterance in different situations. Peaceful picketing is the workingman's means of communication.”

In *Near v. Minnesota*, 283 U. S. 697, this Court, speaking through Mr. Chief Justice Hughes, found it necessary to set aside and annul a statute of the State of Minnesota which would have permitted an injunction against a publication. The Court said at page 707:

“It is no longer open to doubt that the liberty of the press and of speech is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action.”

This decision, thus protecting freedom of speech and of the press is cited in *Thornhill v. Alabama*, 310 U. S. 88, at 95, the *Thornhill* case turning upon the right of free speech as expressed in peaceful picketing.

This interdependence of these rights or of these facets of the same right is illustrated by the fact that in the *Thornhill* case which upheld the right of free speech, expressed in peaceful picketing, the footnote

to the decision cites in support thereof the group of cases reported under the name of *Schneider v. State*, supra, and *Lovell v. Griffin*, 303 U. S. 444, all of which involved handbill ordinances; *De Jonge v. Oregon*, 299 U. S. 353, which was concerned with a state anti-syndicalism act, *Grosjean v. American Press Co.*, 297 U. S. 233, involving a state statute abridging freedom of press; *Near v. Minnesota*, 283 U. S. 697, wherein this Court through Mr. Chief Justice Hughes set aside a state statute of Minnesota abridging the freedom of the press, and other similar cases.

While the cases cited above have all involved unconstitutional or partially unconstitutional enactments or policies of states or municipalities, the constitutional inhibition against abridgment of these constitutional rights applies to Congress as well as to State Legislatures and Agencies, and this by the very language of the First Amendment which is a prohibition against abridgment of these rights by Congress. A discussion of this point is found at 11 American Jurisprudence 647, section 40, citing among other cases, *U. S. v. Butler*, 297 U. S. 1.

The argument of the prosecution in this case has been to the effect that the prohibitions of the Sherman Act take precedence of the protective clauses set out in the Norris-La Guardia Act, as well as those in the Clayton Act. The briefs of other Appellants herein will be found to discuss this proposition quite adequately. To be consistent, the Anti-Trust Division must also argue that the Sherman Act is superior to the Constitution, and this argument, if made, which,

of course, it will not be in so many words, would rely upon the necessity of preventing restraint of interstate commerce, whether or not this involves an abridgment of constitutional rights.

Now all of the various statutory enactments which this Court has invalidated as being in contravention of the First and Fourteenth Amendments, have relied upon this same argument of necessity. The *Schneider* case ordinances were based on the necessity of protecting the streets of a city against "littering" or cluttering up with handbills or papers, but the prohibition of the distribution of handbills, whether for educational or religious purposes, or by a picket, were held to constitute a violation of the right of free speech.

In *Lovell v. Griffin*, 303 U. S. 444, another handbill case, this right of free speech was connected by the Court with the right of free press, since the right to distribute is inseparably connected with the right of publication itself.

And in *Hague v. Committee*, 307 U. S. 496, the ordinance disapproved by this Court, prohibiting public meetings, or parades without a license, was very strongly defended as involving the control by a municipality of its streets. This Court approved the object of control of the streets generally, but held that constitutional rights cannot be abridged or denied "in the guise of regulation" (307 U. S. 516), and *Davis v. Massachusetts*, 167 U. S. 43, while not expressly overruled, was at least not approved as to its state-

ment of this principle. Incidentally, in the *Hague* case, *supra*, the right of free speech was considered in connection with the right of assembly also covered in the First Amendment.

As a matter of fact, this Court has laid down in very succinct language the limitation on the power of a Legislature to abridge constitutional rights.

Through Mr. Justice Roberts, in *Herndon v. Lowry*, 301 U. S. 242, the Court said:

"The power of a state to abridge freedom of speech and assembly is the exception rather than the rule, and the penalizing of utterances of a defined character must find its justification in a normal apprehension of danger to organized government."

While this ruling applied to a Statute of the State of Georgia, and was based on the Fourteenth Amendment, the direct mandate of the First Amendment necessarily applies a similar rule to Acts of Congress such as the Sherman Act.

The case of *Allen Bradley Local 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, is one of the decisions construing the often discussed Wisconsin Employment Peace Act. The statement is sometimes made that this Court in construing the Wisconsin Act has upheld provisions of that statute which abridge the constitutional rights of labor with regard to peaceful boycott and peaceful picketing. This Court said at page 745 regarding the scope of the injunction there considered:

"The only employee or union conduct and activity forbidden by the State Board in this case was mass picketing, threatening employees desiring to work with physical injury or property damage, obstructing entrance to and egress from the company's factories, obstructing the streets and public roads surrounding the factories and picketing the homes of employees."

This case is mentioned as merely illustrating the care with which this Court has upheld law-making bodies in passing laws to restrict disorderly acts in connection with labor disputes; but has carefully upheld the constitutional rights to boycott and picketing as referred to in the *Senn*, *Thornhill*, *Swing*, *Wohl* and similar cases. (*Thornhill v. Alabama*, 310 U. S. 88; *Bakery and Pastry Drivers v. Wohl*, 315 U. S. 769; *Swing v. A. F. of L.*, 312 U. S. 321.)

Hotel and Restaurant Employees v. Wisconsin Employment Relations Board, 315 U. S. 437, was another case involving the Wisconsin Employment Peace Act, in which one of the opinions of the Supreme Court of Wisconsin had apparently restricted the right of employees to normal, peaceful, constitutional activities. (294 N. W. 632, see page 635, column 2, page 636, column 1.) These views, however, were modified by the Supreme Court of Wisconsin in the order denying rehearing. (295 Pac. 634, 635.)

When the case came before this Court, the order of the lower Court was upheld only in so far as it prohibited violent and clearly unlawful acts. This Court said at 315 U. S. 441:

“The act does not limit the right of an employee to speak freely. * * * The term “picketing” as used in (the act) does not include acts held in the Thornhill case (supra) to be within the protection of the constitutional guaranty of the right of free speech. The express language of the act forbids such a construction. It clearly refers to that kind of picketing which the Thornhill case, 310 U.S. 88, 60 S. Ct. 745, 84 L. Ed. 1093, says the state has power to deal with as a part of its power “to preserve the peace and protect the privacy, the lives, and the property of its residents.” * * * In this case it is undisputed that numerous assaults were committed by pickets, that the pickets acted in concert; that the fines of these pickets were paid by the unions, that ingress and egress to and from the premises of the employer were prevented by force and arms. It was at conduct of that kind that the statute was aimed. It is conduct of that kind that is dealt with in this case. It is conduct of that kind that is declared to be an unfair labor practice by the statute and from which the defendants are ordered to cease and desist. * * * And on rehearing: Under the statute and the order of the board as interpreted and construed by the explicit language of the (previous) opinion, freedom of speech and the right peacefully to picket is in no way interfered with. The appellants could not be ordered to cease and desist from something they were not engaged in. * * * The picketing carried on in this case was not peaceful and the right of free speech is in no way infringed by the statute or the order of the board.” 236 Wis. 320, *passim*, 294 N. W. 632, 638, 295 N. W. 634, 635.”

The *Angelos* case (*Cafeteria Employees v. Angelos*, 320 U. S. 293) decided by this Court on November 22, 1943, cleared away uncertainties as to the true nature of peaceful and lawful picketing by holding that even false statements made on the picket line in the absence of deliberate fraud could not be held to make the picketing unlawful. There is no such issue involved in the case at bar, but the *Angelos* case is mentioned here to illustrate the progress toward a true understanding of the nature of free speech as expressed in peaceful picketing.

In *Castwell v. State of Connecticut*, 310 U. S. 296, this Court had before it a statute of the State of Connecticut prohibiting the solicitation of alleged religious, charitable and philanthropic causes without approval of the Secretary of Public Welfare. The appellant was also convicted of inciting a breach of the peace. The Court held that the appellant could not be required to obtain a license prior to making such solicitation, as such requirement would be a denial of his constitutional rights under the First Amendment, this Court saying at the end of the Opinion, page 311:

"Although the contents of the record not unnaturally aroused animosity, we think that, in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace

and order as to render him liable to conviction of the common law offense in question."

This Court did not deny the right of the State of Connecticut to enforce laws against breach of the peace, but this Court held emphatically that the peaceful acts shown by the evidence in that case showed no such incitement to breach of the peace within the police power of the State. Similarly in the case at bar, we do not question in any way the right of the Government of the United States, or of the State of California to prevent or punish violence or disorder, but since no violence was involved in the case, we have the situation clearly raised of the right of any governmental agency within the United States to prevent the exercise of constitutional rights protected by the First Amendment and, in particular, the right of peaceful boycott and peaceful picketing in connection with a labor dispute. The only picketing charged in this case is picketing of unfair products. *Bakery and Pastry Drivers v. Wohl*, *supra*.

In *Thomas v. Collins*, decided by this Court January 8, 1945, we find the latest recognition of the right of free speech in connection with labor activities. This case on its facts is not analogous to the case at bar, but on the principle for which we are arguing, it is highly important since it relies upon and reaffirms the cases heretofore cited herein: *Cantwell v. Connecticut*, *Schneider v. State*, *Thornhill v. Alabama*, *Senn v. Tile Layers*, *Hague v. Committee*, *Lovell v. Griffin*, and *De Jonge v. Oregon*, all cited *supra*.

The *Thomas* case holds that the State of Texas, in the absence of any clear and present danger to organized government, cannot restrict the right of free speech by a labor organizer, and, as pointed out above, relies upon the other cases just mentioned, discussing different facets of this same constitutional right.

The Congress of the United States, in the absence of such clear and present danger, cannot restrict this right of free speech in connection with the maintenance of labor standards, and no Federal Agency, District Court, or Circuit Court of Appeals can restrict such right of free speech.

It is not to be presumed that the Congress of the United States intended to overrule or modify the First Amendment to the Constitution by the passage of the Sherman Act, and its intent not to restrict these rights has been shown by the enactment of the Clayton and Norris-La Guardia Acts. We respectfully urge that this Court shall declare that Congress had no intention of restricting the constitutional right of free speech for the protection of labor standards, as shown by the evidence here; that such restriction was not and is not within the purview and intent of the Sherman Act, the Clayton Act and the Norris-La Guardia Act read together, and that the decision here appealed from be reversed.

As pointed out above, there was no evidence whatever to connect this Appellant, Alameda County Building and Construction Trades Council, with the so-called conspiracy, even if it should be held that this

agreement for the protection of wage standards was illegal as to the parties thereto, but we feel very strongly that on broad constitutional grounds, this Court should follow the concurring opinion of Chief Justice Stone in the *Hutcheson* case and hold that the Sherman Act does not and cannot prohibit the exercise of the right of free speech, as shown by the evidence herein.

Dated, San Francisco, California,

February 2, 1945.

Respectfully submitted,

GUY C. CALDEN,

Counsel for Appellant.

CLARENCE E. TODD,
Of Counsel.

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In the Supreme Court
OF THE
United States

No. 12

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,

vs.

UNITED STATES OF AMERICA.

Appellant,

Respondent.

**SUPPLEMENTAL MEMORANDUM FOR APPELLANT,
ALAMEDA COUNTY BUILDING AND CONSTRUCTION
TRADES COUNCIL.**

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In the Supreme Court

OF THE
United States

No. 12

ALAMEDA COUNTY BUILDING AND CONSTRUCTION
TRADES COUNCIL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL MEMORANDUM FOR APPELLANT, ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL.

This Honorable Court has requested argument regarding the scope of Section 6 and of 13(b) of the Norris-La Guardia Act with relation to prosecutions under the Anti-Trust Act. This Appellant will confine the answers to the situation as regards this particular Appellant and will so far as possible not argue the general questions which will no doubt be covered by the briefs of other Appellants. This Appellant concurs in and incorporates herein so far as possible and proper all the answers and arguments contained in the supplemental briefs of other Appellants in response to the said request of this Honorable Court.

1. SECTION 6 OF THE NORRIS-LA GUARDIA ACT MERELY STATES AS THE LAW REGARDING LABOR UNIONS, THEIR OFFICERS AND AGENTS, THE WELL-RECOGNIZED GENERAL LAW ON THE SUBJECT.

The general law is stated in 22 Corpus Juris Secundum, Section 84, beginning at page 149, as follows:

"The principle in the law of agency which binds the principal for the acts of his agent performed within the scope of his authority has no application in criminal law.

"The civil doctrine that a principal is bound by the acts of his agent within the scope of the agent's authority, see Agency #231, has no application to criminal law since in order to render a person criminally liable it is essential that he have the requisite criminal intent at the time that the supposed criminal act was committed. In other words, specific intent cannot be imputed to a person through an agent, without the principal's direct participation in the criminal act. Similarly, it has been held that as regards criminal liability for participation in a crime the relation of master and servant is not recognized. Therefore, the mere relation of principal and agent or of master and servant does not render the principal or master criminally liable for the acts of his agent or servant, although done in the course of his employment; it must be shown that they were directed or authorized by him, and a master is not criminally liable for acts of his servant done without the knowledge or consent of the master and in a place not under his control."

The tragic mistake of counsel for the Government throughout this case, which error was followed by the

District Court and Circuit Court of Appeals, was in confusing, or rather in identifying the principle of agency relating to criminal liability with the principle governing civil liability and this distinction is well pointed out in the statement from *Corpus Juris Secundum* above cited.

2. NO FOUNDATION WAS LAID BY THE GOVERNMENT FOR HOLDING THIS APPELLANT, ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, LIABLE FOR ANY ACTS OF ITS OFFICERS OR AGENTS SINCE THERE WAS NO PROOF OF THE NATURE OF ITS "FUNDAMENTAL ASSOCIATION OF ASSOCIATION" AND NO PROOF OF THE POWERS OR EVEN OF THE EXISTENCE OF ANY OF ITS OFFICERS OR AGENTS.

As pointed out heretofore, this association, along with other association defendants, brought into Court all of its records pursuant to subpoena; but no record was read in evidence, nor was any evidence whatever offered or received respecting the nature of this organization, its constitution, or by-laws, its purposes and objects, or the designation, responsibilities, or powers of its officers, agents or employees.

In the second *Coronado Coal* case, 268 U. S. 295, cited repeatedly by this and other Appellants herein, this Court in holding a labor association *not* liable for acts of its president, said at page 304:

"In our previous opinion we held that a trades union, organized as effectively as this United Mine Workers' organization was, might be held liable, and all its funds raised for the purpose of strikes might be levied upon to pay damages

suffered through illegal methods in carrying them on; but certainly it must be clearly shown in order to impose such a liability on an association of 450,000 men *that what was done was done by their agents in accordance with their fundamental agreement of association.*"

There is absolutely no evidence in this record as to the "fundamental agreement of association" of the unincorporated association known as the Alameda County Building and Construction Trades Council. Since the powers of the officers and agents of this association do not appear in the evidence, it, therefore, cannot be determined as far as this Appellant is concerned, who are the "individual officers, members, or agents" of this association referred to in Section 6 of the Norris-La Guardia Act, for which reason the contention laid down by this Court in the second *Coronado* case in the language above cited has not been complied with, and there is nothing to uphold the verdict and judgment against this Appellant under the language of Section 6 or of the general law.

3. THE APPLICATION OF SECTION 13(b) OF THE NORRIS-La GUARDIA ACT TO THIS APPELLANT, IS LIKEWISE OBSCURED BY THE MEAGERNESS OF THE EVIDENCE REFERRING TO THIS APPELLANT.

As pointed out heretofore, the indictment (paragraph 15, R. 1819) charges that this Appellant is "advisor to, supervisor of, and governing body for local millmen's and carpenters' unions", etc. But the proof in that regard simmered down to a stipulation

that Appellant is "a voluntary, unincorporated association". (R. 262, 264.)

The written agreements constituting the conspiracy for which all these Appellants were convicted bore no signature of this Appellant and there was not a word of evidence at any time that this Appellant ever approved the agreements or had anything whatever to do with their negotiation or execution.

Under the language of Section 13(b) there is no question that relief is sought against this Appellant and the maximum fine of \$5000.00 was assessed against it by the District Court. There is no proof, however, that it is engaged in "the same industry, trade, craft, or occupation in which such dispute occurs". It may be inferred that since presumably, though not through any evidence, the association is composed in part at least of trade unionists, it has a direct or indirect interest in this dispute, and that it is composed at least in part of millmen who are concerned in this controversy. The above is pointed out to emphasize the condition of the record with regard to this Appellant. Although all of its records were produced in Court in response to a subpoena, none of these records were read into evidence showing or tending to show "the fundamental agreement of association" as referred to by this Court in the second *Coronado* case cited *supra*.

For this reason the answers to the questions put by this Court are necessarily along a somewhat different line from what the answers on behalf of other Appellants will undoubtedly be. Other Appellants were ac-

tually parties to the collective bargaining agreements which the Government contends are unlawful. Since they were parties to the agreements, they were undoubtedly interested in their enforcement and their activities undoubtedly come within the provisions and within the protective clauses of the Norris-La Guardia Act.

This Appellant, on the other hand, was indicted, prosecuted, and convicted without any attempt to put in the evidence which might or might not have tended to show that its officers or agents were or were not proceeding in the line of their respective duties and that their acts were or were not authorized or ratified in accordance with the fundamental agreement of association.

This Appellant's position remains then what it has been throughout the case—that it is sued for a conspiracy to which it was not a party and is sought to be held for the acts of individuals whose authority to act for the association has not been shown. In the *Coronado Coal* case it will be recalled that there was elaborate proof of the laws of association and it was in accordance with this elaborate proof that the Court was urged to hold the association liable for the acts of its agents.

4. THIS APPELLANT TOOK SEASONABLE EXCEPTIONS TO THE ERRONEOUS RULINGS.

Appellant, Alameda County Building and Construction Trades Council, moved to dismiss because of the insufficiency of the indictment to state a defense (R. 140, 141), concurred in the request for instructions as presented by the other labor defendants (R. 1171), and proposed instructions on its own behalf for acquittal, and under the provisions of the Bill of Rights (R. 1197), the rulings in all of the above being adverse to this Appellant.

5. THE ACT OF THE LABOR DEFENDANTS IN CONDUCTING THE PEACEFUL BOYCOTT AND PEACEFUL PICKET LINES CHARGED WERE PROTECTED BY THE BILL OF RIGHTS.

We have made this point and have cited the authorities in our previous brief in this Court. In *Thomas v. Collins*, 323 U. S. 516, this Court has reaffirmed in very emphatic language the priority given the freedoms secured by the First Amendment. (323 U. S. 530.)

This Appellant again calls attention to the language of the concurring opinion of Mr. Justice (now Chief Justice) Stone in *United States v. Hutcheson*, 312 U. S. 219 at 243:

"the publication, unaccompanied by violence, of a notice that the employer is unfair to organized labor and requesting the public not to patronize him is an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress. See *Thornhill v. Alabama*, 310 U. S. 88, 86 S. Ct. 736, 84 L. Ed. 1093."

This Appellant asks that the judgment be reversed and the action dismissed.

Dated, San Francisco, California,

April 3, 1946.

Respectfully submitted,

GUY C. CALDEN,

Counsel for Appellant.

CLARENCE E. TODD,

Of Counsel.

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In the Supreme Court

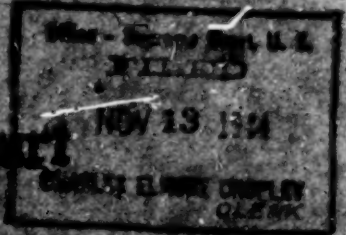
OF THE

United States

October Term, 1944

No. [REDACTED] [REDACTED]

10



LUMBER PRODUCTS ASSOCIATION INC., et al.,

Petitioners.

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

In the United States Circuit Court of Appeals

for the Ninth Circuit

FILED IN SUPPORT THEREOF:

MONSIEUR J. DUTY,

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Attorney for Certain Petitioners.

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In the Supreme Court

OF THE
United States

OCTOBER TERM, 1944

No.

LUMBER PRODUCTS ASSOCIATION INC., et al.,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

*To the Honorable Harlan Fiske Stone, Chief Justice
of the United States, and to the Honorable Associate
Justices of the Supreme Court of the
United States:*

Now come Borman Lumber Company, Hogan Lumber Company, Loop Lumber & Mill Company, Smith Lumber Company, Tilden Lumber Company, E. K. Wood Lumber Company, Zenith Mill & Lumber Com-

pany, Eureka Mill & Lumber Co., Wood Products Inc., D. N. Edwards, Nels E. Nelson, Robert W. Shannon and Andrew Nelson, and respectfully pray that a writ of certiorari may be granted, and issued, directing the Circuit Court of Appeals for the Ninth Circuit to certify to this Honorable Court, for review and determination, the judgment of said Ninth Circuit Court of Appeals in this case.

THE OPINION BELOW.

The opinion of the Ninth Circuit Court of Appeals rendered in this case appears at pages 1674 et seq. of the transcript here.

JURISDICTION.

The judgment of the Circuit Court of Appeals is printed at page 1697 of the transcript. The order of said Circuit Court of Appeals, denying the petition for rehearing, which was filed therein by these petitioners, was entered on October 14, 1944, and is printed at page 1698 of the transcript; and the order of said Court staying issuance of its mandate until after this Honorable Court disposes of the petition for writ of certiorari, if such petition be filed on or before November 17, 1944, is printed at page 1699 of the transcript herein.

The jurisdiction of this Honorable Court is invoked under Section 240 of the Judicial Code, as amended. (28 USCA, Sec. 347.)—

STATEMENT OF THE CASE.

On June 26, 1940, certain labor unions (herein sometimes referred to as "unions") and certain manufacturers, including these petitioners (sometimes referred to as "employers") were charged, by indictment, with an alleged conspiracy to restrain interstate commerce in millwork and patterned lumber; in alleged violation of Section 1 of the Sherman Anti-Trust Act.

The accusation against the defendants named in the indictment may be briefly stated and summarized as asserted in paragraph 28 of the indictment (Transcript p. 28), as follows: That in 1936, the defendant labor unions made certain wage demands on the defendant manufacturers; that the defendant manufacturers "acceded to those demands" and in pursuance thereof the defendants, on or about the 21st day of September, 1936, entered into a contract and agreement ~~covering~~ the wages to be paid to the members of defendant unions, in which said agreement it was further agreed that "no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by saw mills, mills or cabinet shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement".

After alleging the aforesaid terms of said agreement, the indictment then alleged that by subsequent agreements and understandings, the defendants continued in full force and effect "the provisions of said agreement described in paragraph 28, subparagraph

(b) with reference to the restriction on millwork and patterned lumber, manufactured at lower rates than those then in force in the San Francisco Bay Area. (Transcript p. 29.)

After demurrers to the indictment (contending that no public offense is charged therein) had been overruled, but before trial, various of the employer defendants, including these petitioners, withdrew their pleas of not guilty, and entered pleas of *nolo contendere*.

The trial of the remaining defendants resulted in conviction. Thereafter judgment was imposed on all the defendants, including these petitioners.

On appeal to the Circuit Court of Appeals for the Ninth Circuit, that Court affirmed the judgment of the trial Court (except as to two individual defendants); the opinion of the Court is printed at page 1674 et seq. of the transcript herein.

THE QUESTIONS PRESENTED.

The questions presented for consideration and review here, are as follows:

First: Whether a labor contract entered into as a result of the demands or coercion of organized labor, which seeks to protect the contracting labor unions by providing for certain wage scales, and that the employer shall not purchase, and his employees (the union members) shall not do any work upon "any material or article that has had any operation per-

formed on same by saw mills, mills, or cabinet shops, or their distributors, that do not conform to the rates of wage and working conditions of this agreement" is not within the legitimate objectives of organized labor.

Second: Whether, if as a result of such agreement, any restraint, direct or indirect, results as to importations into the state, of materials produced at scales of wages, or under working conditions less favorable to organized labor than the wages and working conditions specified in the agreement, the agreement is thereby rendered unlawful under the Sherman Act, and the act of the labor unions on the one side in demanding and obtaining, and of the employers on the other side in "acceding to" and granting such demands, constitutes a crime and public offense under the Sherman Act.

Third: Whether the Ninth Circuit Court of Appeals erred in ruling and holding that the indictment involved here, charging the acts specified in paragraph First, above, states a crime and public offense.

REASONS FOR GRANTING THE WRIT.

The decision of the Ninth Circuit Court of Appeals, rendered in this case (Transcript p. 1674) is in direct and irreconcilable conflict with the decision of the Second Circuit Court of Appeals, rendered on October 12, 1944, on a similar state of facts, in the case of *Allen-Bradley Co. v. Local Union No. 3 Inter-*

national Brotherhood of Electrical Workers. Said Allen-Bradley decision is not yet reported in Federal Reporter, so for the convenience of this Court, said decision is reprinted in the appendix hereto.

Furthermore, the decision of the Ninth Circuit Court of Appeals, in the case at bar, is in direct conflict with the law as repeatedly announced and followed by this Honorable Supreme Court in *United States v. Hutcheson*, 312 U.S. 219; *Apex Hosiery Co. v. Leader*, 310 U.S. 469; *United States v. Building & Construction Trades Council*, 313 U.S. 539; *United States v. Brotherhood of Carpenters*, 313 U.S. 539, and *United States v. International Hod Carriers*, 313 U.S. 539.

CONCLUSION.

It is, therefore, respectfully submitted that this petition for writ of certiorari should be granted.

Dated, San Francisco, California,

November 10, 1944.

Respectfully submitted,

MORGAN J. DOYLE,

Attorney for Certain Petitioners.

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1944

No.

LUMBER PRODUCTS ASSOCIATION INC., et al.,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

These petitioners contend that the indictment involved here failed and fails to state a public offense. We are concerned here solely with Count One of the indictment, Count Two thereof having been dismissed in the District Court. (Transcript p. 109.)

In Count One the Government has attempted to charge all the defendants (labor unions and employers) with a violation of the provisions of the Sherman Act. The acts of the defendants which the indictment alleges as constituting a public offense con-

sist of the making of a labor agreement between the labor unions on the one side and the employers on the other. The indictment, after alleging that the labor unions made certain demands upon the employers, to which the employers "acceded", then describes the agreement which was entered into, and which the Government contends is unlawful, in the following language (Transcript pp. 28-29):

(b) Pursuant to said understanding set out in paragraph 28, subparagraph (a), the defendants, on or about the 21st day of September, 1936, entered into a contract and agreement covering the wages to be paid to the members of defendant unions, in which said agreement it was further agreed that: "no material will be purchased from, and no work will be done on any material or article which has had any operation performed on same by Saw mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement" (except certain named items);

(c) The defendants have continued, in full force and effect, by subsequent agreements and understandings, the provisions of said agreement described in paragraph 28, subparagraph (b) with reference to the restriction on millwork and patterned lumber manufactured at lower wage rates than those then in force in the San Francisco Bay Area.

It is not charged that the manufacturers (employers) conspired between or among themselves; but rather that they, collectively and as a unit, conspired with the unions, as a unit, by "acceding" to the labor

union demands, and entering into a labor contract covering the said matters demanded and "acceded" to.

It is clear from the allegations of paragraph 28 of the indictment that a "labor controversy" existed; and that the defendant unions had made their demands. It is also alleged that the defendant employers "acceded" to those union demands in a written contract dated September 21, 1936, which imposed upon the employers the duty (1) to pay the scale of wages specified therein, and (2) to refrain from purchasing, or requiring any of the union members to work upon "Any material or article that has had any operation performed on same by saw mills, mills or cabinet shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement."

It is clear that those were the demands made by the unions, to which the employers "acceded."

We think it clear beyond any question, that those labor union demands were, and still are, within the legitimate objectives of organized labor.

Aper Hosiery Co. v. Leader, 310 U.S. 469 at 503.

Consequently, those demands of the unions, being within the legitimate objectives of organized labor, and being therefore lawful and proper demands, the unions had a perfect legal right to make them and to insist upon them; * * * and if necessary to force the acceptance of those demands upon the employers. The employers in "acceding" to those demands merely

acknowledged the rights of the unions, submitted to those rights, and agreed to conduct themselves and their businesses in conformity with those union rights and objectives.

It is elementary that whenever and wherever a legal right exists in one party, a corresponding legal duty is imposed upon another. Here, the demands made by the unions upon the employers were clearly within the legitimate objectives of organized labor, and consequently the unions had a perfect legal right not merely to make, but as well to obtain, receive and enjoy the fruits of their rights as demanded; and that being so, there was forthwith imposed upon the employers, a definite legal right, if not a duty, to acknowledge and "accede" to those union demands. Accordingly, when the employers acknowledged and "acceded" to those union demands, by signing the contract in question, those employers did nothing more nor less than to exercise a legal right, if not a duty, to acknowledge and "accede" to legitimate demands of organized labor.

Certainly it cannot be that under our, or any, system of laws, the exercise of a legal right, or the performance of a legal duty, by any person, whether employer, employee or otherwise, shall constitute a crime.

Nor can it be that the lawful demands of organized labor become unlawful or criminal, if and when they are granted or "acceded to" by the employer.

Nor can it be that a labor contract, wherein the lawful demands of organized labor are met, and which

is therefore lawful, shall become unlawful and criminal, if perchance the burdens (wages and otherwise) imposed upon the employer by the contract shall ultimately, in some manner or other, operate to his advantage. The theory and philosophy of the entire body of labor laws, as presently constituted, is, and should be, that the recognition of the lawful demands of organized labor shall result in ultimate benefits alike to employees, employers and the nation at large. The theory advanced in the opinion of the Circuit Court of Appeals would seem to be that if the sole ultimate effect of a labor contract is to hurt and injure the employer, then the contract is valid; but if any benefits should accrue to the employer, then the contract becomes unlawful and criminal in character. That theory, if adopted in this country, would necessarily spell "finis" to the entire labor movement.

For the foregoing reasons, all of which will be found to be amplified in the petitions and briefs filed, or to be filed herein by labor union petitioners, these petitioners pray that a writ of certiorari be issued herein, and that the judgment of the Ninth Circuit Court of Appeals be reversed.

Dated, San Francisco, California,

November 10, 1944.

Respectfully submitted;

MORGAN J. BOYLE,

Attorney for Certain Petitioners.

(Appendix Follows.)

Appendix

Allen Bradley Company, et al., Plaintiffs-Appellees,
v. Local Union No. 3, International Brotherhood of
Electrical Workers, et al.; Defendants-Appellants.

United States Circuit Court of Appeals, Second
Circuit. No. 339. October Term, 1943. ~~October 12,~~
1944.

Appeal from the United States District Court,
Southern District of New York. Reversed.

Clayton and Norris-LaGuardia Acts; Union Boycott
of Out-of-State Manufacturers; Right of Unions to
Use Labor Weapons in Labor Controversies Regard-
less of Injuries to Third Parties.—The Anti-Trust Act
is not applicable to a labor controversy merely because
others than the immediate parties to the controversy
are injuriously affected as a result thereof. Where, as
a result of labor disputes between local manufacturers
engaged in a certain industry and a union dominating
the entire industry in the local area, the union suc-
ceeds in obtaining for its members higher wages,
shorter working hours, and improved working con-
ditions, by combining with the local manufacturers to
close the market in the local area to the products of
manufacturers in other areas within and without the
state, such other manufacturers, though suffering great
injury, are not entitled to an injunction restraining
the union's actions, notwithstanding that the local
manufacturers actively participate in the boycott by
the consummation of union agreements obligating them
not to purchase the products of the other manufac-

turers, and that the stifling of competition results in greater profits for them. The privilege of the members of a union to agree among themselves to refuse to work upon products of the other manufacturers in order to improve their working conditions is for practical purposes an almost complete shield for the union's actions, since a union acting for the benefit of its members does not forfeit the statutory exemption from the Anti-Trust Law merely because it combines with non-labor groups.

Walter Gordon Merritt, New York, New York (McLanahan, Merritt & Ingraham, Burgess Osterhout, and Hyler Connell, all of New York, New York, on the brief), for Plaintiffs-Appellees.

Harold Stern, New York, New York (George Rosling and Saul Pearce, both of New York, New York, on the brief), for Defendants-Appellants.

Before SWAN, AUGUSTUS N. HAND and CLARK, Circuit Judges.

[Recapitulation]

Action by Allen Bradley Company and ten other companies manufacturing electrical equipment against Local Union No. 3, International Brotherhood of Electrical Workers, and six named persons individually and as officers or agents of the Union, for an injunction and a declaratory judgment of illegality of certain alleged union activities. From a judgment for the plaintiffs, 51 F. Supp. 36, upon report of a special master, 41 F. Supp. 727, the defendants appeal. Judgment reversed and action dismissed.

[*Nature of Proceeding*]

CLARK, C. J.: Defendants, Local Union No. 3 of the International Brotherhood of Electrical Workers, American Federation of Labor, and certain of its officers, appeal from an order of the district court enjoining various activities of the union and declaring them to be a conspiracy in restraint of trade in violation of the Sherman Antitrust Act, 15 U. S. C. A. § 1, *et seq.*, and laws amendatory thereof. The enjoined activities constitute in sum any and all actions on the part of the union which would tend to boycott from the New York City area market electrical equipment manufactured by the various plaintiffs.

[*Proceedings in Lower Court—Scope of Review Sought*]

Plaintiffs filed their complaint below in December, 1935. The following year most of the plaintiffs joined in a companion suit against the union, and additional defendants, for treble damages at law under the Sherman Act; and this has remained pending in the district court without trial. The parties agreed to refer the present action to a special master for determination of "all issues of law and fact," and it was so ordered. After two and one-half years of hearings, at which, as the master states, more than 400 witnesses were examined, some 1,700 exhibits were presented, and some 25,000 pages of testimony, adduced, he filed an opinion, October 2, 1941, in which he discussed the facts and the law, concluding that the plaintiffs should have judgment, and asked the parties to submit pro-

posed findings of fact and conclusions of law, 41 F. Supp. 727. The parties having complied, the master, on November 23, 1942, filed his final report, containing lengthy findings and conclusions, which, upon cross-petitions to confirm and dismiss, the court below confirmed with some limited alterations and additions to the findings, 51 F. Supp. 36. The final decree, covering 121 printed pages of the record, included these findings, 374 in number, with 26 conclusions of law, as well as the form of injunction to be issued and the declaratory judgment declaring "that the combination and conspiracy and the acts done and being done down to the date of the conclusion of the taking of testimony herein before the Special Master, in furtherance thereof, all as set forth in the findings of fact as made and adopted by the Court herein, are unlawful and contrary to" the Sherman Act. This appeal is taken upon only the findings and judgment, and hence does not seek any modification of the facts found.

[Parties Involved]

The eleven plaintiffs in the action are manufacturers of electrical equipment whose factories are located for the most part without the New York City area. Several operate under collective bargaining agreements with local unions in their localities. Local 3 is the powerful local for the five boroughs of New York City of the International Brotherhood of Electrical Workers, itself one of the most influential members of the American Federation of Labor. Local 3 possesses approximately 15,000 members, divided into numerous separate classifications. Charter A members, number-

ing around 7,000 consist generally of journeymen electricians engaged in the fabrication and installation of electrical equipment, while Charter B members, numbering around 8,000, are largely employees of local manufacturers producing electrical equipment. Sole voting power rests in Charter A members, and Charter A membership is entailed for sons and brothers of existing members. Prior to 1928, Local 3 was composed only of the present Charter A members; but the membership now covers virtually everyone working on or producing electrical equipment in any way within the area. Although there are other officers and an executive committee, the nerve center of the union rests in the office of the business manager, who, among other things, has the complete power to select which members shall fill existing job vacancies.

[Facts Found]

The acts constituting the alleged conspiracy in restraint of trade which resulted in the boycott of plaintiffs' products are all elements of an extensive campaign undertaken by Local 3 to organize the electrical industry in New York City. This occurred with the appointment in 1934 of a new business manager, Harry Van Arsdale, Jr., after the depression years of 1931 to 1934 had left building at a standstill in New York City and found the union with only a quarter of its members employed. Thereafter year by year, as the master reports, Van Arsdale fought for, and gradually obtained for the union members, a reduction in the number of hours of work per week at the basic rate

of compensation, as well as an increase in the rate of compensation. Meanwhile the membership of the union greatly increased, so that it was highly successful in unionizing and in obtaining closed-shop agreements in both the local manufacturing and the local contracting branches of the electrical equipment industry. The findings then show that "agreements and understandings" entered into by the three groups—manufacturers, contractors, and union—gave them a complete monopoly which they used to boycott the equipment manufactured by the plaintiffs.

While the boycott as found ran the gamut of electrical equipment from highly complicated switchboards and control devices down to novelty lamp shades, the case of the modern switchboard is offered as typical. There are in New York City a number of companies manufacturing switchboards who, before these activities of Local 3, shared an open competitive market with many of plaintiffs. In return for a closed-shop agreement calling for higher wages and shorter hours for employees, however, Local 3 promised these local companies an exclusive market for switchboards within the city, so that they could name their own price to offset increased production costs. Local 3 carried out its promise with the help of the electrical contractors. It had already won closed-shop agreements from a vast majority of the latter through a series of strikes, threatened strikes, and sympathetic strikes by other unions in the building trade, which threatened to tie up all construction work in New York City. It now secured the further terms that union

members should work only on switchboards of local manufacture by union shops, and that the contractors should have the sole power to buy materials for any job, with a proviso as additional protection that only products bearing the union label would be utilized. Like the manufacturers, the contractors were not averse to the extra expense of union material and labor, when all competition was thus removed from the field.

The contractors, however, went so far as to organize a voluntary Code of Fair Competition, which stipulated that every contractor should file with the code committee (upon which two officials of the union sat) every bid made by him on any work authorized in New York City, that he must include in his bid 35% of the labor cost for overhead, 10% of the materials' cost for commission, and 6% of the total for management, with price cutting penalized by substantial fines. This code was a part of the union contract with several contractor associations in 1935, but it was disapproved by the International President of the I. B. E. W. and the record is not entirely clear whether thereafter it remained a part of the union contract until the contractors themselves gave it up in 1939. At any rate, it is found that the union filed no complaints under the code and did not share in the fines or itself take any action against a contractor or cause its members to refuse to stay in the employ of disciplined contractors.

In other fields, with respect to other items of electrical equipment, a similar situation was found to

prevail. Only when no local unionized manufacturer made an article was its use permitted, and in such cases, if at all feasible, it was required either that the article come from the manufacturer "knocked down," to be put together by union labor, or that the finished article be unwired and rewired upon receipt. For years it has been more economical for the manufacturer to wire at the factory such articles as lighting fixtures and control equipment; but the union required the wiring to be done by its own members on the job, even though, in the case of control equipment, the manufacturer had to complete the wiring before shipment for testing purposes. Curiously, a similar requirement was also in force with regard to some equipment manufactured by Local 3 members in closed Local 3 shops. Switchboards, for example, had to be "knocked down" at the factory and reassembled at the job.

[Summary of Facts]

All in all, the situation disclosed by the findings is that of an entire industry in a local area, quite dominated and closed to outsiders by a powerful union, whose members receive as a result exceedingly higher wages, shorter working hours, and improved working conditions, and whose co-partners—the local manufacturers and contractors—also gain by the greater profits achieved through the stifling of competition. This has been accomplished by the traditional labor weapons of refusal to work upon disfavored goods, with peaceful and non-violent persuasion, picketing, and black-

listing, and now the active participation of the local employers. The boycott, however, is virtually complete against manufacturers, such as plaintiffs, who have no working agreements with Local 3. It makes no difference that most of plaintiffs are located without the jurisdiction of Local 3 and hence could never bargain collectively with it in any event, or that some of plaintiffs are already working under harmonious agreements with other unions. Moreover, as must be expected in cases where a local area is thus closed to outside products, the persons injured will include not only the excluded manufacturers and rival unions, but also—at least initially and very likely continuously—the consuming public, which must pay higher rates (as, indeed, it must also for raising of wages and lowering of hours of work) and does not receive the benefits of improved machinery or methods of operation. Thus it appears that general electrical work and equipment are costly in New York City, and instances are cited where equipment of plaintiffs was turned down for local equipment with the union label at twice or three times the cost. Since the lowest bidder no longer gets city contracts, if it be not a union bid, the city has lost Federal grants, which were premised upon acceptance of the lowest bid. An outstanding example of the consequences from this type of economic warfare to third persons is that of one local manufacturer which has two price lists for its products, one for union use within the city at more than twice the price of the other for use without the jurisdiction.

[*Ambiguity Caused by Multiplicity of Words
in Lower Court's Findings*]

This is only a brief, but, as we believe, a presently adequate, summary of the many pages of record devoted to a statement of the facts. The industry of counsel and of the special master is to be commended; but we are constrained to say that the very verbosity and superfluity of the findings have not aided decision as much as doubtless had been expected. We have had occasion to point out recently that findings, prepared after decision by winning counsel, even though accepted by the court, are not as helpful as the trier's own original views; and this is particularly true when the findings are lengthy and repetitious. *Matton Oil Transfer Corp. v. The Dynamic*, 2 Cir., 123 F. 2d 999, 1001; *United States v. Forness*, 2 Cir., 125 F. 2d 928, 942, certiorari denied *City of Salamanca v. United States*, 316 U. S. 694; *Petterson Lighterage & Towing Corp. v. New York Central R. Co.*, 2 Cir., 126 F. 2d 992, 906; cf. Preliminary Draft of Proposed Amendments to Rules of Civil Procedure for the District Courts of the United States, 1944, p. 59. Here there is an added difficulty in the incorporation of all the findings in the judgment and their inclusion by express statement in the declaration of invalidity and by implication in the prohibition of the injunction. Doubtless this was done to satisfy requirements that an injunctive order must set forth the reasons for its issuance and describe in reasonable detail the acts to be restrained, Federal Rule 65(d), continuing 28 U. S. C. A. § 383, cf. 29 U. S. C. A. § 109; but a multiplicity

of words is as little revealing as a dearth of words. Labor union officers and members are entitled to a more direct and succinct statement of the illegalities of which they are held guilty and which they must cease under penalties of fine and imprisonment. This basic requirement assumes the greater importance here because the course of decision below has left the case not free of ambiguity on a crucial feature. For, as we shall point out, recent decisions have conceded labor unions quite broad powers to refuse to work and to employ peaceful persuasion, but have left open the effect of combinations or conspiracies of unions with non-union elements, particularly for non-union objectives. Thus the nature and purpose of the conspiracies here may quite possibly be the crux of the case.

*[Element of Conspiracy with Non-Labor Groups—
Change in Emphasis as Case Progressed]*

This ambiguity as to the importance here of the element of conspiracy with non-labor groups—as against other more traditional labor-union activities—apparently stems from a real change in emphasis as the case progressed. Indeed, such a change was but natural, if not necessary, because of the complete reversal of the controlling judicial precedents during the long pendency of this litigation. In the original complaint of 1935 the stress is on union power which has forced the contractors to employ only union labor and “through their [defendants’] said control over said electrical contractors” has coerced the latter not to purchase electrical equipment wired or assembled wholly or partly by non-union men outside the Metro-

politan Area. And the prayer for injunction—important because it is, except for limited additions hereinafter noted, the injunction ultimately granted—was against the inducing of persons not to work upon plaintiffs' products, with no direct prohibition of conspiring with non-union groups and indeed no reference to such groups unless possibly under the vague term "confederates." Significantly, no non-union co-conspirator was joined as a party defendant and none has since been added. The expanded amended complaint of 1937 does set forth at considerable length allegations of contracts with the electrical contractors who, however, were said "to have been and now are, forced, compelled and coerced by Local 3 to enter into" these contracts for the conduct of their business in the Metropolitan Area and restricting their choice as to the manufacturers from whom they would make their purchases of electrical equipment. And the requested form of injunction remained as in the complaint. The master's opinion stressed the union's economic power, which had not merely obtained higher wages and shorter hours of labor, but had brought submission and then complaisant and active participation from the local employers. The voluminous findings filed in 1942 make much more of the conspiracy, or conspiracies; and several conclusory findings allege an intent to give the local manufacturers and contractors power to control the market and the market price. The injunction as granted, however, accepts, with slight and unimportant changes of wording, the original eight subparagraphs as prayed for in the complaint, and merely adds two more: a 9th against mak-

ing, carrying out, or seeking to secure the observance "of agreements or understanding with contractors, manufacturers, or others, restraining, hindering or preventing" the purchase or use of plaintiffs' electrical equipment on the ground that it was not made in New York City or worked on by members of Local 3 or was in competition with equipment made by manufacturers employing members of Local 3; and a 10th against "any action whatsoever" hindering the purchase or use of plaintiffs' equipment on the same grounds as stated in the 9th. The broad scope of the injunction is such as to reach peaceful attempts by the defendants—among whom are included the individual officers of the union—to induce any person (thus even a union member) not to deal with plaintiffs, while it is most doubtful if the unnamed "confederates" are reached at all. Cf. Federal Rule 65 (d), *supra*.

[*Acts Were Done for Benefit of
Union Members*]

Nevertheless, on any judicious view of the case, we do not believe the motive or intent of defendants can be at all in doubt; and we are left only to appraise its legal validity and effect. That the union and its officers were acting wantonly, corruptly, or even benevolently for the mere benefit of their copartners, and were not at all times acting for what they conceived to be the self-interest of the union and its members, is nowhere asserted, but is negatived by the general import of all the findings and explicitly by several, of which Finding 361 is typical. That finding, after stating that the defendants and those acting in concert

with them, were "in no way concerned with the working conditions, rates of wages or union affiliations of the employees in plaintiffs' factories outside the Metropolitan Area," continues:

"The ban on the plaintiffs' products is and has been imposed and maintained by the aforesaid combination of the defendants, the local union contractors and the local union manufacturers, solely because the plaintiffs do not, or because of their geographical location outside the Metropolitan Area cannot, employ members of Local No. 3 in their factories outside the Metropolitan Area."

In other words it was a make-work campaign for the benefit of union members.

*[Authorities Immunizing Union Activities from
Prosecution Under Anti-Trust Act]*

For half a century and against strong popular, political, and legislative pressure, the courts struggled to resolve the anomaly of applying a statute forbidding combination in restraint of trade to a social organism which must depend on united effort for its existence and upon at least certain restraints of trade as a reason for its being. Finally, at long length the Supreme Court boldly announced what must be taken as an abandonment of the attempt. The case which most significantly marks this change is *United States v. Hutcheson*, 312 U. S. 219, 231, 236, where the majority of the Court through Mr. Justice Frankfurter made clear that the Sherman, Clayton, and Norris-LaGuardia Acts must be read together as "interlacing.

statutes" presenting "a harmonizing text of outlawry of labor conduct," and that "the Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized trade union activities as redefined by the later Act." Hence the test of lawful union activities in the famous Section 20 of the Clayton Act, 29 U. S. C. A. § 52—which had been held merely declaratory of existing law in decisions such as *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 16 A. L. R. 196—is now to be given full effect, contrary to the holdings of the earlier cases, as stating permissible union activities in any "labor dispute" within the broad definition of that term of the Norris-LaGuardia Act, 29 U. S. C. A. § 113, as applied in cases such as *Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.*, 311 U. S. 91, and *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552. Hereafter, following the terms of these Acts, it can no longer be considered illegal for any person or persons, singly or in concert, to cease or refuse to perform any work or labor or peacefully to persuade any person to work or abstain from working; or to cease to patronize any party to such a dispute, or to recommend, advise, or persuade others by peaceful and lawful means so to do. 29 U. S. C. A. §§ 52, 104. And a labor dispute includes, *inter alia*, "any controversy concerning terms or conditions of employment * * * regardless of whether or not the disputants stand in the proximate relation of employer and employee"; and a case grows out of a labor dispute when it involves persons engaged "in the same industry, trade, craft, or occupation; or have direct or indirect interests therein."

whether it is between employers and employees, or employers and employers, or employees and employees, or associations of each, or when it involves "any conflicting or competing interests" of persons "participating or interested" in the dispute. 29 U. S. C. A. § 113.

[*Doctrine of Hutcheson Case Reaffirmed by Subsequent Decisions of U. S. Supreme Court*]

That the Court is now settled in its present view of the inapplicability of the Sherman Act even to labor controversies whose most injurious effects may be to others than the immediate parties is made clear by later important and unanimous decisions. The *Hutcheson* case itself immunized against prosecution under the Act a strike and boycott against a brewery company arising out of a jurisdictional dispute between two unions as to building construction work being done for it and for its adjoining tenant. Shortly thereafter the Court affirmed dismissals of other indictments, in *per curiam* opinions which merely cited the *Hutcheson* case. *U. S. v. Building & Construction Trades Council*, 313 U. S. 539; *U. S. v. United Brotherhood of Carpenters & Joiners*, 313 U. S. 539; *U. S. v. International Hod Carriers', etc., Council*, 313 U. S. 539, affirming *U. S. v. Carrozzo*, D. C. N. D. Ill., 37 F. Supp. 191. The latter case is particularly instructive because, as the opinion below shows, it involved a charge of conspiracy as against unions and their members to prevent the sale and use in the Chicago area of labor-saving machinery (truck mixers) or in the alternative to force the employment of the same num-

ber of workmen as before the use of the machinery. Further, the defendants were charged with having obtained "working agreements" with the Chicago contractors to this effect. Finally in the controlling case of *U. S. v. American Federation of Musicians*, 318 U. S. 741, the Court affirmed the dismissal in D. C. N. D. Ill., 47 F. Supp. 304, 305, of an action for an injunction brought by ~~the~~ United States against a nation-wide boycott by musicians and their union of recorded music supplanting their services; it did this merely on citation of the Norris-LaGuardia Act and the *New Negro Alliance* and *Milk Wagon Drivers' Union* cases, *supra*. In this case the union comprised "virtually all musicians in the nation who made music for hire"; and it was charged not only with conspiring to prevent the use of "canned music" by radio broadcasting stations, in juke boxes in various establishments, and in the home, but also with accomplishing its purposes through coercion exercised on the record-making companies by notifying them that the union members would not make musical records. Of course, the union was not interested in the working conditions of the employees of the record manufacturers or the radio stations, but was interested in providing work for its members; and it enforced its boycott in a *national*, not in a purely local, market.

[*Case at Bar Controlled by Authorities Because
It Involves a Labor Dispute*]

These cases, as well as earlier ones, are too closely similar to the case at bar, indeed going beyond it in some aspects, to permit the broad adjudication of

illegality here and the injunction based upon it to stand. That this is a labor dispute within the statutory definition follows from the precedents. If a dispute as to the conditions of work between a union and employers still remains a labor dispute as to third persons interested therein or injured thereby, its complexion is hardly changed by a settlement—possibly only an armistice, not a treaty—between the original parties which hurts the third persons more than did the original controversy. *United States v. International Hod Carriers', etc., Council, supra*; *Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc., supra*, 311 U. S. at page 99. The decision in *Columbia River Packers' Ass'n v. Hinton*, 315 U. S. 143, 147, strongly relied on by the plaintiffs and the court below, is not to the contrary; for there the controversy was between a processor of fish on the one hand, and independent fishermen and their association on the other. The Court emphasized that the defendants' desire was "to continue to operate as independent businessmen"; the dispute related "solely to the sale of fish," and hence was unlike those involved in earlier cases, where the employer-employee relationship was "the matrix of the controversy." The fact that some of the fishermen had a small number of employees who were also members of their association did not alter the essential nature of the controversy. So in *American Medical Ass'n v. United States*, 317 U. S. 519, 533-536, the professional association was interested solely in preventing the operation of a business conducted in corporate form by Group Health Association, Inc., not in the terms and conditions upon

which the latter employed its physicians. Here, however, the defendant union is admittedly a bona fide labor organization; and the "conditions" of the employment of its members by the local manufacturers and contractors are "the matrix of the controversy," indeed the very thing which causes the plaintiffs their injuries.

*[Union Members' Privilege to Refuse to Work
Upon Manufacturers' Products]*

It seems clear, therefore, that the union members may refuse to work upon the plaintiffs' products; and, in view of the position of economic power which the union has now attained, that privilege is for practical purposes an almost complete shield for the defendants' acts which are most injurious to the plaintiffs. For all the other acts charged against the defendants may be barred; and yet if the union can hold its ranks together and keep its members from working upon plaintiffs' products, the Metropolitan Area will still be closed to them. The injunction does not purport to interfere with that privilege directly, though it comes close to doing so in the provisions, clearly too broad, which forbid the union officers from inducing anyone, even members, from thus doing what it and they may legally do. Moreover, peaceful persuasion, even of others, is clearly within the now applicable statutory terms. Indeed, the injunction is so far contrary to the statute that its mandate might well have been stated in the converse of the terms of the Clayton Act, § 20, viz., as restraining Local 3 and its officers "from terminating any relation of employment, or from ceas-

ing to perform any work or labor * * * or from ceasing to patronize * * * any party to such labor dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do." 29 U. S. C. A. § 52, *supra*. And the vague scope of the declaratory judgment is even more indefinitely inclusive, in terms reaching all the activities of the defendants set forth in the findings.

*[Effort to Reframe Injunction Would Be
Vain and Useless]*

If the present judgment and injunction must therefore fall, should they be reframed to reach only the asserted conspiracies with the local manufacturers and contractors? Such a result would obviously call for the most discriminating draftsmanship for the injunction, to make quite clear what was still permissible, to avoid all difficulties as to the extent of its reach in view of the failure to include the co-conspirators, and to define the objectionable union purpose and intent which, rather than the consequences of defendants' acts, now would become crucial, though proof adequate to justify enforcement by way of contempt proceedings would be hard to secure. But more important is the fact that such an injunction, though on its face so seemingly far-reaching, would after all be of limited effect. For under it, compliance to the extent of public dissolution of all the agreements would satisfy the legal formalities; but still if the union continued its boycott of plaintiffs' products, conditions would remain substantially as before. Such an inconclusive result can hardly fail to add to the bitterness between

the parties; one can easily foresee the almost impossible position of the Court in attempting fairly to pass upon the proceedings in contempt which would inevitably follow. We do not think the precedents are correctly interpreted to require an effort so vain and useless.

*[Union Does Not Necessarily Forfeit Its Immunity
When It Combines With Non-Labor Groups]*

The doctrine that a union necessarily forfeits the benefits of its statutory exemption from the antitrust laws when it combines with non-labor groups, which has been asserted by some authorities, is rested upon a reading in the most extensive form possible of a limitation noted by Mr. Justice Frankfurter to the doctrine stated in the *Hutcheson* case, as follows:

"So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

And then to the word "groups" he dropped a footnote, which reads:

"Cf. *United States v. Brims*, 272 U. S. 549, involving a conspiracy of mill work manufacturers, building contractors and union carpenters." 312 U. S. at page 232.

The *Brims* case affirmed the conviction of union members in the Chicago area who refused to work on

non-union out-of-state mill work, with the result that an exclusive market was established for the local manufacturers; and the argument is that by these words of the Court the *Brims* case is still left in unabated force.

Now it is doubtful if Justice Frankfurter intended to define precisely just the extent of the limitation the Court had in mind. There was no necessity for him to do so at that time; and the matter had ramifications which the Court would not be likely to dispose of cavalierly. Hence the excepting sentence doubtless should not be read with exacting literalness; but in view of the use which had been made of it, we should note that it is not a positive affirmation, but a statement of only restricted reach. If its converse is to be accepted as an affirmative, it is not that combinations with non-labor groups are taboo, but only that when a union no longer acts in its self-interest and does so combine, then the licit and the illicit may have to be determined by a judgment as to the rightness or wrongness, etc., of the union end or purpose. Such a truism would seem still of undoubted validity; for the *Hutcheson* case did not purport to remove all rulings whatsoever upon labor activities. Thus, acts of violence are not protected by the statutes; nor, in any sound view, should labor union activities be usable merely as a blind or cloak for illegality. Thus, in *Albrecht v. Kinsella*, 7 Cir., 119 F. 2d 1003, 1004, 1005, the Court said:

"Labor unions as such were here involved only in name—and the name of labor was being used as a shield or blind behind which a venal group was hiding

and at the same time levying tribute upon industry, business, and home builders. * * * When officials of the labor union step outside their union labor fields and act as highway men, levying tribute on those who wish to build homes or other buildings, acting for their individual gain, the immunity granted to labor unions under the amendment to the Sherman Act does not extend to them."

And the Court went on to say:

"The test is whether the activity complained of is one promotive of, and within the scope of, the legitimate objects of a labor union or whether the union is being misused by those holding official position or positions of trust therein, who, conspiring for their private and their personal profit, are using the union name to obtain immunity from Sherman Act prosecutions and at the same time shield their misconduct behind an organization whose fair name and activities are likely to mislead a court or jury as well as the public."

It seems to us that this is the distinction the Supreme Court had in mind in its reference to the *Brims* case, and that the latter cannot now be held as broadly applicable as perhaps it was originally. As one commentator puts it, the *Brims* case "should be deflated to its position as one of a line of cases uncritically condemning refusal to work on non-union products delivered in interstate commerce"—a position no longer tenable in the form stated—and that "when the union is permitted to act alone, an agreement with employers should not automatically add the condemna-

ble virus." Tunks, *A New Federal Charter for Trade Unionism*, 41 Col. L. Rev. 969, 1012. This distinction seems to us the logical deduction to be made from the present state of Supreme Court decisions, and to be consistent with the statutes upon which the Court relies, and which do not in terms exclude business-labor combinations, but, as we have seen, do extend the inclusive labor dispute to include employment interests not themselves primarily engaged in a controversy as to terms and conditions of employment. On this basis it would follow that here the activities which cannot be forbidden to Local 3 acting by itself are not to be interdicted because other groups join with them to the same end.

[*Consequences of Judicial Non-Interference*]

That the present state of the authorities is such as to leave the harshness of the economic struggle to bear with unusual weight upon the consuming public has been the conclusion of commentators who have urged legislative action to check some of the abuses of power which exist. But the making of ground rules for business competition is difficult in any case, as shown by current discussions of such matters as patent monopolies and the issue of compulsory licensing to prevent the use of patents to retard new inventions; and the problems are immeasurably increased with the addition of the explosive elements of attempted regulation of organized labor. Indeed, advocates of legislative reform seem not agreed as to whether it should take the course of external controls of conduct towards third persons or internal regulation of union affairs.

The determination of such questions of policy is, of course, no proper function of the courts; we mention the matter to indicate that we are not unaware of the disturbing consequences to the parties involved of judicial non-interference which, however, in the light of experience seems likely to be less costly to stable social institutions than judicial attempts to resolve these problems without the aid of, if not contrary to, legislative direction.

[*Ruling*]

Judgment reversed and action dismissed.

[*Dissenting Opinion*]

SWAN, C. J., (dissenting): I do not read the Supreme Court cases as requiring us to hold that none of the conduct of the appellants, as found by the special master and the district court, can be deemed a violation of the anti-trust laws. The members of a labor union are privileged to agree among themselves upon a boycott, although the effect of it may be to restrain interstate commerce, when the purpose of their boycott is to make work for themselves, or improve working conditions or strengthen their union as against a competing union; but I do not think it has yet been held that they may agree with their employers to enforce a boycott for the very purpose of restraining commerce and increasing the price of articles manufactured or dealt in by their employers within a local market area. As I read the findings of fact the case at bar falls within the latter classification. Among the findings supporting this view the following may be quoted:

"353. The combination and conspiracy hereinbefore described was intended to and did give the local union manufacturers power to control the market price of their products as a result of their monopoly and was intended to and did give the union contractors exclusive purchasing rights to all electrical equipment for installation and contracts involving larger sums of money wherewith to add to their profits."

"359. The purpose of the defendants and those participating with them; in conducting the boycott is, in so far as is practicable, to exclude from the New York City market all electrical equipment unless it is manufactured or built by members of Local No. 3, employed by either local union manufacturers in the factory or by local union contractors on the job where the equipment is to be installed."

"366. All the acts of the defendants and those acting in concert with them were calculated and intended to prevent and destroy all interstate commerce in electrical equipment of such kinds as can be and are manufactured by local union manufacturers or built on the job by local union contractors in order thereby to secure a monopoly for the members of Local No. 3 and for their employers, the union electrical contractors and the union electrical manufacturers, of the work of manufacturing in whole or in part such types of electrical equipment to be used in the City of New York."

"368. A desire or intention by the conspirators to bring about any modification of the standards or terms of wages, hours, or working conditions, or employment

relations maintained by the plaintiffs, or any of them, in any of their factories outside the Metropolitan Area, did not in any way motivate the conspirators in boycotting the plaintiffs' products."

In my opinion the facts found by the trial court make applicable the principle of *United States v. Brims*, 272 U. S. 549, involving a conspiracy of mill work manufacturers, building contractors and a carpenters' union. Neither the Clayton Act nor the Norris-LaGuardia Act has rendered that case obsolete, as recent opinions of the Supreme Court plainly show. See *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 501; *United States v. Hutcheson*, 312 U. S. 219, 232. The ninth circuit has just applied the rule of *United States v. Brims* to facts very similar to those of the case at bar. *Lumber Products Assn. v. United States*, decided August 23, 1944. I think that we should likewise apply it. Until the contrary shall be authoritatively determined, I am unwilling to believe that the Congressional legislation exempting labor unions from injunctions was intended to go so far as to permit employers and employees to combine to do what neither the City of New York by municipal ordinance nor the State of New York by legislative fiat could lawfully do, namely, exclude manufactured articles from the local market merely because they were manufactured outside the state. I agree with my colleagues that the injunction was granted in terms too broad, but I cannot agree that no injunction whatever is permissible or that the prayer for a declaratory judgment should be denied. I therefore dissent from dismissal of the complaint.

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Nos. 666, 667, 668, 674, and 675

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In the Supreme Court of the United States

OCTOBER TERM, 1944

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
PETITIONER

v.

UNITED STATES OF AMERICA

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS, ETC., ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

LUMBER PRODUCTS ASSOCIATION, INC. ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,
PETITIONER

v.

UNITED STATES OF AMERICA

BOGGMAN LUMBER COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 666

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
PETITIONER

v.

UNITED STATES OF AMERICA

No. 667

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS, ETC., ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

No. 668

LUMBER PRODUCTS ASSOCIATION, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 674

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,
PETITIONER

v.

UNITED STATES OF AMERICA

No. 875

BOORMAN LUMBER COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The Government believes that the above petitions for certiorari present important questions of federal law which should be reviewed by this Court. These questions primarily concern the application of Section 20 of the Clayton Act to combinations in restraint of trade entered into between labor organizations and non-labor groups. See *United States v. Hutcheson*, 312 U. S. 219, 232. The Government also believes that the decision below is in some respects in conflict with the decision rendered by the Circuit Court of Appeals for the Second Circuit on October 12, 1944, in *Allen Bradley Co. v. Local Union No. 3, International Brotherhood of Electrical Workers*, petition for certiorari filed November 24, 1944, No. 702.

For the foregoing reasons, the Government does not oppose the petitions for writs of certiorari.

CHARLES FAHY,
Solicitor General.

DECEMBER 1944.

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Nos. 666, 667, 668, 674 and 875

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In the Supreme Court of the United States

OCTOBER TERM, 1944

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
PETITIONER

v.

UNITED STATES OF AMERICA

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS, ETC.,
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UNITED STATES OF AMERICA

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v.

UNITED STATES OF AMERICA

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUN-
CIL, PETITIONER

v.

UNITED STATES OF AMERICA

BOOMIAN LUMBER COMPANY ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

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PETITIONERS

v.

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ALAMEDA COUNTY BUILDING AND CONSTRUCTION
TRADES COUNCIL, PETITIONER

v.

UNITED STATES OF AMERICA

No. 675

BOORMAN LUMBER COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES**OPINIONS BELOW**

The district court did not render an opinion. The opinion of the Circuit Court of Appeals (R. 1674) is reported in 144 F. (2d) 546.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on August 23, 1944 (R. 1697) and petitions for rehearing were denied on October 14, 1944 (R. 1698). Petitions for writs of certiorari were filed in Nos. 666, 667, and 668 on November 11, 1944, and in Nos. 674 and 675 on November 13, 1944. These petitions were granted on January 2, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and as modified by Rule XI of the Criminal Appeals Rules.

QUESTIONS PRESENTED

1. Whether the district court correctly charged the jury that an agreement between a group of millwork manufacturers and unions representing their employees that the manufacturers will not purchase millwork made in other States under a wage scale lower than that paid by the manufacturers, violates the Sherman Act, regardless whether the agreement grew out of an employer-employee wage dispute or whether the motive of the unions in joining the combination was to promote their self-interest.

2. Whether an indictment charging that the defendant unions, in order to secure acceptance of their wage demands by a group of manufacturers of millwork, combined with the latter to exclude from the local market millwork made in other States under a lower wage scale and to police and enforce this agreement jointly with the manufacturers, sets forth a violation of the Sherman Act, not within any immunity given by the Clayton Act.

3. Whether the district court correctly instructed the jury with respect to the liability of a labor organization under the Sherman Act for acts done by its agents or representatives.

STATUTES INVOLVED

Section 1 of the Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, as amended by the Act of August 17, 1937, 50 Stat. 693, 15 U. S. C. sec. 1, provides in part as follows:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *

Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal, shall be deemed guilty of a misdemeanor, * * *

Section 20 of the Act of October 15, 1914, 38 Stat. 738, 29 U. S. C. sec. 52, known as the Clayton Act, provides in part as follows:

no restraining order or injunction shall be granted by any court of the United

States, or a judge or the judges thereof, in any case between an employer and employees, * * * involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property * * *

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Section 6 of the Norris-LaGuardia Act (47 Stat. 71, 29 U. S. C. sec. 106) is set forth on p. 44, *infra*.

STATEMENT

This case concerns the validity of an indictment charging a conspiracy to restrain interstate commerce in millwork and patterned lumber, in violation of Section 1 of the Sherman Act, and the validity of the convictions, after trial, of certain of the defendants named in the indictment. Count two of the indictment, which charged a conspiracy to monopolize a part of the interstate commerce in such products, was dismissed as to all of the defendants on motion of the Government.¹

The indictment, returned in June 1940 (R. 113, 115, 1133),² named as defendants a number of concerns manufacturing millwork and patterned lumber³ (hereinafter referred to as millwork) in

¹ Count two of the indictment was dismissed prior to trial as to all defendants who stood trial (R. 111). Count two was later dismissed as to the defendants who had pleaded *nolo contendere* after they had been permitted to withdraw their pleas as to count two (R. 1403).

² The record also erroneously gives the year as 1942 (R. 37).

³ Millwork and patterned lumber was defined in the indictment to mean "lumber which has been planed, cut, or assembled into standard or special patterns or forms, such as moulding, sash, doors, tongue-and-groove pattern, shelf pattern, flooring, casing, rustic ceiling, rustic siding, and other wood products prepared for use in the construction of dwellings, buildings, fixtures, and store fronts. It shall also include all wood and the products thereof used in the construction of prefabricated buildings."

the San Francisco Bay Area* (referred to herein as the Bay Area or Area), certain individuals connected with such manufacturers, and three trade associations performing various services on their behalf (R. 8-18, 22-23). These defendants will sometimes be referred to as the manufacturer group. The indictment also named as defendants an international labor union, four local labor unions affiliated with the international union, three trades councils, and certain of their members and representatives (R. 18-21, 23-25). They will sometimes be referred to as the labor group.

After demurrers to the indictment (R. 42, 52, 79-80, 92) had been overruled (R. 87, 103), some members of the manufacturer group pleaded *nolo contendere* (R. 107-109). The case then went to trial as to the remaining defendants. During the trial the case was dismissed as to some of these defendants (R. 598, 1122) and the jury returned verdicts of guilty against all of the others (R. 1170-1171, 1364-1365). Following entry of judgments on the *nolo contendere* pleas and jury verdicts (R. 1366-1406), some of the manufacturer group who had pleaded *nolo contendere*, and all of the convicted members of the union group appealed to the Circuit Court of Appeals for the Ninth Circuit (R. 1407-1435).

*San Francisco Bay Area was defined in the indictment to mean "the counties of San Francisco, Marin, Contra Costa, Alameda, Santa Clara, and San Mateo, of the State of California."

That court reversed the convictions of three individuals of the labor group upon the ground that they had acquired immunity by testifying before the grand jury (R. 1689-1695), and affirmed the judgments of conviction of all other defendants who had appealed (R. 1697). Petitioners in this Court include all those whose convictions were thus affirmed.⁵

THE INDICTMENT

The following is a summary of the principal allegations of count one of the indictment:

There are numerous manufacturers of millwork located in Washington, Oregon, and other States outside of California who make millwork in large quantities, utilizing the most efficient available machines and mass-production methods under which millwork is often completed in the same operation as the manufacture of lumber from the log (R. 7-8). The defendant manufacturers and others located in the Bay Area are not mechanically equipped to make millwork of as high quality or as efficiently or economically (R. 8). In addition, manufacturers of millwork in States other than California, while employing

⁵ Petitioners in Nos. 668 and 675 are members of the manufacturer group. Petitioner in No. 666 is the defendant international union, petitioner in No. 674 is one of the defendant Trades Councils, and petitioners in No. 667 are the remaining members of the labor group whose convictions have been affirmed.

union labor and operating entirely union shops, have a lower wage scale than manufacturers in the Bay Area (R. 8). Prior to the formation of the defendants' conspiracy 80% of the millwork used in that Area was manufactured in States other than California, whereas since the conspiracy has been formed less than 10% of the millwork used in the Area comes from outside of California (R. 6-7).

Substantially all of the millwork manufactured in the Bay Area is made by the defendant manufacturers (R. 25). They employ only millworkers affiliated with the defendant unions (R. 25). These unions control the supply of workmen available for manufacturing and installing millwork in the Bay Area (R. 25-26). Since the defendant unions are represented on the defendant Trades Councils, and these Councils are composed of representatives of substantially all of the local building and construction trade unions in the Bay Area, the defendant unions are able to obtain from these other unions and from the Trades Councils assistance and cooperation in securing compliance with the rules, regulations, and policies which the defendant unions promulgate (*ibid.*).

Paragraph 26 of the indictment charges in general terms that the defendants have, since about September 1, 1936, been engaged in a conspiracy to restrain interstate commerce in millwork (R. 26-27). Paragraph 27 then declares

that the "general purpose, object, and effect" of this conspiracy has been and is: (a) to prevent manufacturers of millwork located without California from selling and shipping their millwork in interstate commerce into the Bay Area, (b) to prevent lumber yards and jobbers in the Bay Area from purchasing millwork manufactured in States other than California, and (c) to raise, fix, stabilize, and maintain prices for millwork shipped in interstate commerce into California for sale in the Bay Area (R. 27-28).

Paragraph 28 alleges that the defendants have employed the following means and methods, among others, for the purpose of effectuating their conspiracy: In 1936 the defendant manufacturers agreed to accede to wage scale demands of the defendant unions, "in return for which" the defendant unions agreed to prevent the sale and shipment of millwork into the Bay Area by manufacturers located outside California (R. 28). In September 1936 the parties entered into a written agreement which covered the wages to be paid and provided that, except as to certain named items, "no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills, or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement" (R. 28-29). These provisions have been continued in effect by subsequent agreements and under-

standings (R. 29). For the purpose of enforcing these provisions, a joint conference board composed of representatives of both the defendant manufacturers and defendant unions has held regular weekly meetings and the defendants have at various times interchanged information relative to interstate shipments of millwork into the Bay Area (R. 29-30). They have also counseled together, advised and agreed upon courses of action in connection with the enforcement of the provisions of their agreement (R. 30). They have prevented the sale and delivery of millwork shipped in interstate commerce to the Bay Area and have, by means of pickets and threats to picket, forced cancellation of orders for the shipment of millwork into the Area from other States and prevented the unloading of freight cars bearing such millwork (R. 30-31). In furtherance of their conspiracy, the defendants have at regular intervals published and circulated among manufacturers (including defendant manufacturers), jobbers and lumber yards in the Bay Area, lists setting forth the agreed prices to be charged for millwork in the Bay Area; and these lists have been used as price lists in the sale of millwork in the Area by such manufacturers, jobbers and lumber yards (R. 31-32).

In entering into the conspiracy the defendant unions "were not attempting to enforce or protect the right to bargain collectively nor did they

act in the course of a legitimate labor dispute as to wages, hours, and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the said combination and conspiracy was directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area and to maintain arbitrary, artificial, and noncompetitive prices" (R. 32).

The conspiracy has had the effect of preventing persons in the Bay Area from purchasing millwork manufactured outside of California and has resulted in unduly increasing the prices of millwork used in the Bay Area (R. 33).

THE EVIDENCE

The evidence in support of the allegations of the indictment may be summarized as follows:

In 1936 the manufacturer group and the union group, through their representatives, collectively met, negotiated, and entered into an "Employer-Employee Agreement of Wages, Hours and Working Conditions" (R. 280-288). This agreement provided that, except as to certain designated items—

it is agreed that no material will be purchased from, and no work will be done on any material or articles that has had any operation performed ~~on same~~ by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the

rates of wage and working conditions of this Agreement (R. 283-284).

A succeeding employer-employee contract entered into around the middle of 1938 also contained an exempt list and an identical restrictive provisions (R. 289). Subsequently, in 1938, a superseding employer-employee agreement was entered into which retained an exempt list but altered the language of the restrictive provision to read (R. 293):

it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto.

After the expiration of the 1938 contract, the restrictive agreement was not contained in the written employer-employee contracts. However, there was a verbal agreement between the manufacturer group and the union group that the manufacturer group would not purchase and the union group would not work on any millwork produced under a lesser wage scale (R. 216, 221, 235, 415-416, 478).

While there was some conflict in the evidence as to the genesis and the objective of the foregoing restrictive agreements, there was evidence

from which the jury could have found the following: The purpose of the restriction "was to create a sort of a Chinese Wall around the San Francisco Bay Area" (R. 216, 235, 238) for the protection of the manufacturer group (R. 388, 534). This group objected to the wage demands of the union group in 1936 on the ground that the manufacturers could not accede to the demands and meet the competition of manufacturers, located outside the Bay Area, operating under a lower wage scale (R. 517, 789-790, 991). After protracted conferences (R. 605, 517) the manufacturer group stated they were willing to concede a reasonable wage increase "provided some way could be worked out that would protect them against outside competition" from "manufacturers who were operating under a lower wage scale" (R. 517, 235). The union group agreed to do all in their power to exclude outside material if the manufacturer group agreed to their demands (R. 373). Both groups have continually recognized that the various wage provisions and the restrictive agreement were reciprocal (R. 398, 216, 235, 385). In one instance the manufacturer group insisted upon and received increased union assistance in enforcing a boycott by the union group of banned material (R. 420, 552-553).

The written agreements of 1936 and 1938 specifically excluded from the operation of the re-

restrictive provision certain enumerated materials and articles which were referred to as being on the exempt list (R. 284, 289-290, 293-294). These exemptions were included at the request of the manufacturer group (R. 792, 832, 941). Each manufacturer desired to exempt those items which it did not manufacture and was required to purchase (R. 790, 592). Since each manufacturer did not purchase the same items, the manufacturers were in disagreement on the composition of the exempt list, a disagreement which was resolved by agreement between the manufacturers and the union group (R. 790, 818, 892, 941).

The manufacturer and union groups cooperated in enforcing the restrictive agreement. They established a conference committee, composed of representatives of each group, which dealt with the enforcement of the agreement (R. 366, 384, 405-406, 549, 393, 428, 329). The manufacturer group advised the union group when millwork banned by the agreement was brought into the Bay Area (R. 405-406); joined with representatives of the union group in a conference with a third party over the disposition of banned material brought into the Area (R. 353-354, 361); and joined with the union group in imposing sanctions on a third party (R. 366). In this latter instance the manufacturer group agreed to cease manufacturing for a local dealer who purchased some of its mill-

work requirements outside the Area, and the union group approached several contractors and obtained their promise not to purchase any of the local dealers' products (R. 366).

The union group was active in enforcing the restrictive agreement, using the following, among other, methods: (1) Union representatives advised purchasers of millwork in the Area that they must purchase all except exempted items from local manufacturers and, in some instances, that, if they failed to do so, their places of business would be picketed (R. 254-256, 267-268, 309, 319-320, 588).

(2) Purchasers of millwork produced outside the Area were requested to appear before the Trades Council for a hearing on whether they should be placed on the "We Do Not Patronize" list (R. 334, 346-347); and in certain cases motions were adopted to place their names on such a list (R. 418, 420). (3) Union representatives attached signs reading "HOT CARGO" and "HOT LUMBER" to millwork brought into the Area (R. 199-200, 327-328, 588). (4) Purchasers of millwork produced outside the Area were required to ship it out of the Area or have it "rerun" by a local manufacturer (R. 368, 381, 386, 404, 405, 430). A "rerun" operation accomplishes no alteration of the millwork (R. 368, 381). When the union representatives discussed the restrictions on bringing millwork into the Area with third parties, whether purchasers or sellers, and when they discussed

their activities in this connection in their meetings, they frequently referred to their agreement with the manufacturer group (R. 421, 478, 494, 499, 500, 517, 518).

The restrictive agreement was consistently and knowingly applied to millwork manufactured outside California (R. 267-268, 308-310, 317-318, 327-328, 335-336, 345, 349-350, 355-356, 380-381, 408-410, 467-468, 589-590), and the effect of petitioners' activities was to prevent purchasers in the Bay Area from purchasing millwork produced outside of California and to prevent manufacturers located outside of California from selling millwork in the Bay Area (R. 258, 261-262, 309, 312, 317-318, 319, 356, 393), and to require purchasers in the Area to pay a substantially higher price for millwork than they would have had to pay if they bought from manufacturers located outside of California (R. 323-325, 357, 367-368, 380-382, 409, 436, 434).

SUMMARY OF ARGUMENT

I

The district court correctly instructed the jury that if it found that the defendant manufacturers had combined with the defendant unions to prevent importation into the Bay Area of millwork made in other States under a wage scale below the scale prevailing in the Area, such a combination would violate the Sherman Act, and the fact that the defendant unions joined in the combination to

promote their self-interest would constitute no defense. A combination thus to restrain commercial competition and to subject the producers of low-cost goods to an organized boycott imposes restraints of trade of a kind which have been repeatedly held to be outlawed by the Sherman Act.

Labor organizations are not, as such, excluded from the prohibitions of the Sherman Act. The Act does not permit labor unions to enter into combinations having the purpose and effect of controlling supply or price in interstate markets, even though by this means some protection is given to the wage rates of the union members. *United States v. Brims*, 272 U. S. 549; *Coronado Coal Co., v. United Mine Workers*, 268 U. S. 295. While this Court has said that the Sherman Act is not aimed at such curtailment of price competition as results from eliminating differences in labor standards (*Apex Hosiery Co. v. Leader*, 310 U. S. 469, 503-504), the present case does not involve mere standardization of wage rates and working conditions among a group of employers through the medium of an employer-employee agreement. Rather it involves combination between the two groups to boycott the trade of third persons if their wage scale is below that of the combining parties.

Nor does the combination here come within immunities conferred by Section 20 of the Clayton Act. That section validates specifically enumerated practices of labor unions by which labor

has customarily exercised the power of collective action in disputes with employers concerning terms and conditions of employment. But when labor combines with non-labor groups to utilize the united power of management and labor to suppress the trade of others, such a combination is not rendered immune either by the language or the purposes of the Act. See *United States v. Hutcheson*, 312 U. S. 219, 232. In an analogous situation, the authority given to farmers' co-operatives by the Capper-Volstead Act to market collectively has been held not to permit a co-operative to combine with outside groups to control the supply or price of the product which the cooperative markets. *United States v. Borden*, 308 U. S. 188. In like manner the authorization of collective action by labor in controversies with employers, which Congress has protected by the Clayton Act and later legislation, should not be construed as authorizing them to combine with a non-labor group in direct restraint of interstate trade. In determining the scope of the immunities given by the Clayton Act, effect must be given to the long-continued policy of Congress, embodied in the Sherman Act, to protect interstate trade against monopolization, price fixing, and kindred evils.

II

The indictment charges that the defendant unions agreed to participate in a combination

which had the effect and purpose of restraining commercial competition, controlling supply and raising prices, in return for the defendant manufacturers' acceptance of the wage scale sought by the unions. It further charges that the defendant unions joined in and carried out this combination solely to prevent importation into the Bay Area of goods made under a wage scale lower than that of the Area, and to maintain noncompetitive prices within the Area. The indictment thus charges, in effect, that labor agreed to lend its aid in enforcing a ban against low-cost goods in consideration of acceptance of its wage demands by the defendant manufacturers.

This type of combination, whereby labor joins with the employers in an agreement to eliminate competitive goods from the employers' home market, clearly falls within the reservation expressed by this Court in the *Hutcheson* case concerning the non-application of the immunities of the Clayton Act to combinations between labor and non-labor groups. And, apart from the Clayton Act, the combination charged in the indictment plainly comes within the ban of the Sherman Act.

III

The trial court charged the jury that the labor union defendants could be held responsible for the acts of their officers or agents done on their behalf and within the scope of their authority, or

while performing duties actually delegated to them. This instruction correctly applies the principles established in the *Coronado* cases and embodied in Section 6 of the Norris-LaGuardia Act. The statutory requirement that there be "actual authorization" of the acts done is shown by its legislative history to be satisfied by the conduct of an agent within the scope of his authority. There was evidence from which the jury might infer that the Alameda Council and the United Brotherhood (the two petitioners as to which the question is presented) were parties to the conspiracy under the above test.

ARGUMENT

I

THE DISTRICT COURT CORRECTLY INSTRUCTED THE JURY THAT THE SHERMAN ACT PROHIBITS AN AGREEMENT BETWEEN A MANUFACTURER GROUP AND A UNION GROUP THAT THE MANUFACTURER GROUP WILL NOT PURCHASE IN INTERSTATE COMMERCE GOODS PRODUCED UNDER A LOWER WAGE SCALE THAN THAT MAINTAINED BY THE MANUFACTURER GROUP

The instruction of the trial court most unfavorable to the petitioners who stood trial permitted the jury to convict if they found an agreement between the defendant manufacturers and defendant unions under the terms of which the manufacturers agreed not to purchase millwork, including millwork shipped from other States, manufactured under a lower wage scale than that

prevailing in the Bay Area (R. 1150). In other instructions to the jury or evidentiary rulings (R. 1150-1152, 824-826) the court ruled, in effect, that it is no defense to such an agreement that it was entered into as an incident to a dispute between employers and employees concerning terms or conditions of employment or that the union group participated in the agreement for the purpose of promoting their own self-interest. We shall therefore assume these additional elements are a part of the instruction to which we have referred.

We shall consider, first, whether the agreement that the defendant manufacturers will not purchase goods made under a lower wage scale than that paid by these manufacturers violates the Sherman Act, apart from any immunity conferred by the Clayton Act, and, second, whether the agreement is given immunity by the latter act.

The boycott agreement clearly falls within the prohibition of the Sherman Act. It restrained not only the trade of the defendant manufacturers, by restricting the goods which they might purchase in interstate commerce, but also the interstate trade of the out-of-State producers whose goods were boycotted. The necessary purpose and effect of the agreement was to eliminate low-cost goods as a competitive factor in the Bay Area and to increase the price to the ultimate consumer or purchaser. The agreement narrowed the outlets to which some manufacturers could sell and the sources from which others could buy;

it subjected producers having a lower wage scale to an organized boycott; and it directly suppressed competition from the sale of the goods of these latter producers. Agreements of this character have been repeatedly held to be among those at which the Sherman Act is directed. *Fashion Originators' Guild, Inc. v. Federal Trade Commission*, 312 U. S. 457; *Eastern States Retail Lumber Dealers' Assn. v. United States*, 234 U. S. 600; *Montague & Co. v. Lowry*, 193 U. S. 38.

That some of the petitioners are labor unions and that an objective of the agreement, so far as they were concerned, may have been to protect the wage rates paid to the members of the unions, does not, without more, immunize the combination from the Sherman Act. It can no longer be contended that Congress has excluded labor organizations and their activities from the operation of the Act. *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 487-489, and authorities there cited. In view of "the vagueness of its language, perhaps not uncalculated", the extent to which the Sherman Act applies to the activities of labor unions must be determined by the courts "in the light of its legislative history and of the particular evils at which the legislation was aimed." *Id.*, p. 489. The decisive consideration has been the purpose of Congress to outlaw "restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment

of purchasers or consumers of goods and services". *Id.*, p. 493. This is shown by the line of cases illustrated by *United States v. Brims*, 272 U. S. 549. That case held that an agreement between a labor group and a non-labor group not to purchase goods shipped in interstate commerce is not removed from the prohibitions of the Sherman Act merely because one of its purposes is to protect the wage rates of the agreeing parties. There manufacturers of millwork in Chicago, local building contractors who purchased millwork and had it installed, and representatives of a union whose members were employed by both manufacturers and contractors, formed a combination under which the manufacturers and contractors agreed to employ only union members and the latter agreed to refuse to install millwork made by non-union labor, a large part of which came from factories in other States. This Court held that such a combination violated the Sherman Act even though a purpose of the agreement was to eliminate the competition of "nonunion mills which were paying lower wages" (272 U. S. 549, 552).

Similarly, an earlier case, *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 310, had held that a combination to keep certain goods out of interstate commerce would violate the Sherman Act if its purpose was to prevent the competition in interstate market of non-union goods affecting "injuriously the maintenance of wages

for union labor." (This holding, it may be noted, was referred to and at least impliedly approved in *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 511.)

We do not believe that the authority of these holdings has been impaired by more recent decisions of this Court. Petitioners place considerable reliance upon the statement in the *Apex* case (310 U. S. at 503-504) that "elimination of price competition based on differences in labor standards" has not been considered to be "the kind of curtailment of price competition prohibited by the Sherman Act." But it is clear from the context, from the cases cited (*Levering & Garrigues Co. v. Morrin*, 289 U. S. 103; *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 209; *National Association of Window Glass Mfrs. v. United States*, 263 U. S. 403), and from the amplificatory footnote on page 504, that the Court was referring only to such elimination of price competition as is involved in employer-employee agreements designed to establish industry-wide wage scales and other conditions of employment. As is stated in the footnote, its enactments support the conclusion that "Congress does not regard the effects upon competition from such combinations and standards as against public policy or condemned by the Sherman Act." The Court obviously was not concerned with an agreement, such as is here involved, to suppress competition, not by eliminating wage differentials

among the parties themselves, but by boycotting and excluding from interstate commerce goods made under a lower wage scale by third persons not party to the agreement. Such an agreement involves more than an incidental restraint upon commerce: it represents an attempt by the parties directly to control by joint action the movement and supply of goods of others in interstate commerce. Apart from the Clayton Act at least (the effect of which we shall shortly consider), the mere fact that such an agreement promotes the self-interest of the parties concerned does not insulate it from the condemnation of the Sherman Act. *Fashion Originators' Guild, Inc. v. Federal Trade Commission*, 312 U. S. at 467-468.

The Court's opinion in the *Apex* case explicitly recognized that a combination to attain an objective declared unlawful by the Sherman Act does not become lawful merely because a labor union is a party thereto (p. 501): "This is not a case of a labor organization being used by combinations of those engaged in an industry as the means or instrument for suppressing competition or fixing prices." Significantly, we believe, the *Brims* case was cited at this point. The Court went on, in the *Apex* opinion, to emphasize factors none of which is present in the case at bar. There "the combination or conspiracy did not have as its purpose restraint upon competition in the market" for the employer's goods; its object was "to compel" the

employer "to accede to the union demands and an effect of it, in consequence of the strikers' tortious acts, was the prevention of the removal of (the employer's) product for interstate shipment"; and "the delay of those shipments was not intended to have and had no effect on prices of hosiery in the market" (p. 501). Here, however, the purpose and effect of the combination was to suppress competition in interstate commerce of goods made by others; its object was not to compel employer accession to any union demands for raising wages, reducing hours, union recognition, or other labor objectives; it was intended to have and had the effect of raising prices and reducing competition. In these circumstances we think that the decision in the *Apex* case affords no basis for immunizing the combination involved here.

It is further submitted that Section 20 of the Clayton Act does not legalize the combination here under which the manufacturer group agreed not to purchase millwork produced under a lower wage scale than that in effect in the Bay Area. Section 20 declares lawful certain specified acts and practices when they grow out of a dispute between employers and employees concerning terms or conditions of employment. It may be conceded that the validity of the convictions of the petitioners^{et} who stood trial must be tested upon the assumption that the agreement not to purchase

low-cost and low-wage-scale millwork grew out of such a dispute.*

The acts which Section 20 declares to be lawful are:

(1) Terminating any relation of employment, ceasing to perform any work, or persuading others by peaceful means so to do.

(2) Attending at any place for the purpose of peacefully obtaining or communicating information or peacefully persuading any person to work or to abstain from working.

(3) Ceasing to patronize or to employ any party to a labor dispute or persuading others by peaceful and lawful means so to do.

(4) Paying to or withholding from any person engaged in such a dispute any strike benefits.

(5) Peaceably assembling in a lawful manner and for lawful purposes.

(6) Doing anything which might lawfully be done in the absence of a labor dispute by any party thereto.

The acts thus given immunity include the usual weapons employed by labor in dealing with employers. As this Court stated in the *Hutcheson* case (pp. 229-230), Section 20 "withdrew from

* This assumption is required by the district court's rulings, which withdrew from jury consideration matters which would be pertinent if the illegality of the petitioners' conduct were dependent upon a showing that the agreement which they made did not grow out of a labor dispute as defined in Section 20.

the general interdict of the Sherman Law specifically enumerated practices of labor unions." The Court also quoted (p. 229) from Justice Brandeis' dissent in *Duplex Co. v. Deering*, 254 U. S. 443, 484, the statement that the Clayton Act "was designed to equalize before the law the position of workingmen and employer as industrial combatants."

The enumerated practices, read in the light of the objectives of the statute, do not, however, embrace an alliance between labor and management to boycott the trade of third persons. It is true that under the broad definition of parties to a labor dispute contained in Section 13 of the Norris-LaGuardia Act, the out-of-State producers of millwork would be parties to a labor dispute between the Ray Area manufacturers and their employees. It is also true that Section 20 immunizes "ceasing to patronize" a party to a labor dispute or "recommending, advising, or persuading others * * * so to do." But the quoted words are apt to describe the boycotting of a product by ultimate purchasers or consumers and propagandizing on behalf of such boycott. A definite agreement of groups of manufacturers and unions to boycott goods produced by third persons is not within the traditional concept of "recommending, advising, or persuading" others to cease to "patronize." Such conduct lies even further beyond the objectives which the Clayton Act was designed to achieve.

We believe that this Court may have contemplated such alliances between labor and management to impose restraints upon the trade of third persons when it said in the *Hutcheson* case (p. 232):

So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means: [Italics supplied.]

This interpretation of the opinion is supported by the Court's citation of *United States v. Brims*, 272 U. S. 549, where, as has been noted (*supra*, pp. 23-24), a combination between labor and non-labor of the same character as the present one was held to violate the Sherman Act. Significantly, the Court cited this case in a footnote to the words italicized in the above quotation.

Petitioners' contention that the Clayton Act immunizes their combination is closely analogous to the claim advanced by a farmer's cooperative in *United States v. Borden*, 308 U. S. 188, that the Capper-Volstead Act operated to exempt it from the Sherman Act. The indictment in that case charged the cooperative with combining with major distributors of milk and other persons to maintain noncompetitive prices for payment to

all producers of milk marketed in the Chicago area, to compel independent distributors to exact like prices from their customers, and to control the supply of milk brought into Chicago. The cooperative relied as a defense upon Section 1 of the Capper-Volstead Act (7 U. S. C. sec. 291), which authorizes farm cooperatives to market their products collectively.⁷ This Court nevertheless held (pp. 204-205) that the right given to the members of farmers' cooperatives to unite in marketing their product and "to make the contracts which are necessary for that collaboration" did not permit cooperatives to combine with "other persons" in restraint of trade.

Similarly, the petitioners here argue that, since the Clayton Act permits labor unions to combine to raise wages and since payment of lower wages by competitors of their employers may adversely affect achievement of this objective, the Act is to be construed as sanctioning agreement with employers to exclude the competitive product from the market. But the objective of the Capper-

⁷ Section 2 of the Act (7 U. S. C. sec. 292) authorizes the Secretary of Agriculture to issue a cease and desist order, following an administrative hearing, if he finds that any cooperative is monopolizing or restraining interstate commerce to such an extent that the price of any agricultural product is "unduly enhanced". The Court in the *Borden* case held (p. 206) that this procedure was merely a qualification of the authority conferred by Section 1 and therefore did not bar or postpone prosecution under the Sherman Act of conduct not authorized by Section 1 of the Act.

Volstead Act, attainment by members of a cooperative of higher prices for their product by eliminating competition among themselves in the marketing of goods, is also promoted if the cooperative is permitted to enter into agreements which bring the price at which others sell the same product into alignment with the price at which the cooperative desires to sell. In fact, sale of competitive goods at lower prices operates more directly to defeat the aim which the cooperative seeks to achieve through collective action than does sale of competitive goods produced under a lower wage scale operate to defeat the objective of achieving high wages through collective bargaining.

In the *Borden* case, however, this Court refused to read into the Capper-Volstead Act implied authority to combine with outsiders. By parity of reasoning, we submit, implied authority to labor unions to combine with non-labor groups to effect restraints of trade not given any direct sanction by the Clayton Act should not be read into Section 20 of the latter act. We do not believe that Congress, in conferring upon farmers and upon labor unions analogous immunities from the Sherman Act, intended to grant to combinations in which labor unions participate a blanket immunity from the Sherman Act. It can hardly be supposed that, in determining the applicability of the Clayton Act to combinations involving labor unions, the exclusive

test is whether such unions acted in their self-interest. The long-continued policy of Congress, embodied in the Sherman Act, to prohibit price enhancement and monopolization of trade by means of combination, must also be given effect.

The Clayton Act leaves labor free, in the absence of violence or other illegal conduct, to use strikes, picketing, and boycotts, and to solicit aid in support thereof from the general public; and it is no violation of the Sherman Act to enter into agreements with a group of employers concerning uniform wage rates and other terms of employment. *Apex Hosiery Co. v. Leader, supra*, at pp. 503-504. But if the Clayton Act should be construed to sanction agreement by a group of employers, written into a contract with a union, not to purchase goods made under a differing wage scale, then the Act would validate agreement between two powerful groups to monopolize supply in the local market, with the resulting inevitable enhancement of prices solely in furtherance of the respective interests of the two combining groups.

It is one thing to permit full scope to the use by labor of its collective bargaining power vis-à-vis employers. It is quite another to sanction agreements between employers and employees in which there is a mutuality of interest in restraining the trade of third persons. This would, in effect, substitute for the process of collective bargaining between the two groups—as envisaged,

protected and regulated by the Clayton Act and other allied statutes—a merging of their conflicting interests for the fashioning of a powerful economic instrumentality for restraining the trade of others. And while such a result might tend to eliminate disputes between employers and employees, it is not to be presumed that Congress regarded this consideration as paramount to all others.

We submit that there has been ~~no~~ decision by this Court contrary to the holding of the court below in the present case. Petitioners refer to four cases^{*} in each of which this Court affirmed *per curiam* a decision of a district court holding that the indictment or the complaint did not set forth a cause of action under the Sherman Act, not within exemptions given by the Clayton Act. In none of these cases, however, was there a charge of a conspiracy between labor and non-labor groups. Each of these cases involved only a conspiracy by one or more labor organizations and their representatives to use various means, such as strikes, boycotts and threats thereof, to attain familiar labor objectives. Only in the *Hod Carriers* case were there allegations which raised even

^{*} *United States v. United Brotherhood of Carpenters & Joiners of America*, 313 U. S. 539; *United States v. Building and Construction Trades Council*, *ibid.*; *United States v. International Hod Carriers & Common Laborers' District Council*, *ibid.*; *United States v. American Federation of Musicians*, 318 U. S. 741.

a question as to whether persons other than members of labor organizations were party to the conspiracy.

The charge in the *Hod Carriers* case was that two local labor organizations and certain of their representatives had conspired to prevent manufacturers in States other than Illinois from selling and shipping to the Chicago area truck mixers, machines useful in making concrete for street paving and building construction. It was a part of the conspiracy that, by means of strikes and threats to strike, the defendants prevented paving contractors and building contractors from using these machines and that, by means of strikes and threats of strike, the defendants "forced" paving contractors to enter into "working agreements" with one of the defendant labor organizations requiring the contractors using truck mixers "to employ the same number of men which they would employ if truck mixers were not used."² The indictment did not charge that the contractors were co-conspirators; under its allegations their relation to the conspiracy was that of unwilling victims. Furthermore, their compelled adherence to "working agreements" with the union did not go beyond agreement to

² See *United States v. Carrozso*, 37 F. Supp. 191, 192-193 (N. D. Ill.), for a summary of the allegations of the indictment.

employ certain additional labor when the truck mixers were used. Obviously, in so far as there was agreement by the contractors, it was against their interest. In no real sense could this conspiracy be said to be one in which a non-labor group had joined forces with a labor group to impose restraints upon the interstate trade of third persons.

Subsequent to the decision in the *Hutcherson* case, the lower federal courts have held, for the most part, that combinations between labor and non-labor of the kind here involved fall within the interdict of the Sherman Act.¹⁰ Such combinations have been held illegal in *Truck Drivers' Local No. 421, etc. v. United States*, 128 F. (2d) 227 (C. C. A. 8); *Albrecht v. Kinsella*, 119 F. (2d) 1003 (C. C. A. 7)¹¹; *United States v. Central Supply Ass'n*, 40 F. Supp. 964 (N. D. Ohio); *United States v. Associated Plumbing & H. Merchants*, 38 F. Supp. 769 (W. D. Wash.); *United States v. New York Electrical Contrs. Ass'n*, 42 F. Supp. 789 (S. D. N. Y.).

¹⁰ For like decisions prior to the *Hutcherson* case, see *Boyle v. United States*, 259 Fed. 803 (C. C. A. 7); *United States v. International Fur Workers Union*, 100 F. (2d) 541 (C. C. A. 2), certiorari denied, 306 U. S. 653. See also *Local 167 v. United States*, 291 U. S. 293.

¹¹ In this case the court held that the combination would have been within the Sherman Act if it had been in restraint of interstate commerce but held that under the allegations of the complaint the commerce restrained was intrastate.

In the *Truck Drivers'* case, *supra*, the court said (128 F. (2d) 227, 232):

if [a union and its members] undertake to act jointly with any non-labor group, whose object is to effect an illegal restraint of trade or commerce, and, as part of a concerted plan or effort, they agree or undertake to do any act, whose purpose may reasonably be construed to be directly intended to assist such non-labor group in accomplishing its illegal purpose, even though the result may also be beneficial to the position of labor, they may become subject to the operation of the Sherman Act. Thus, labor cannot seek to accomplish its legitimate objects through the illegal means of combining or conspiring with a non-labor group to fix or maintain prices on goods moving in interstate commerce without subjecting itself to the possibility of criminal prosecution under the provisions of the Sherman Act.

The only clearly contrary holding of the lower federal courts is *Allen Bradley Co. v. Local Union No. 3*, 145 F. (2d) 215 (C. C. A. 2), now before this Court on certiorari (No. 702, this Term), although some aspects of *United States v. B. Goedde & Co.*, 40 F. Supp. 523 (E. D. Ill.), may be viewed as contrary to the holding of the court below in the present case. Some of the petitioners also rely upon *Gundersheimer's, Inc. v. Bakery, etc., Union*, 119 F. 2d 205 (App. D. C.), where

the basis of a triple-damage suit under the Sherman Act was that the defendant union was, by means of a strike, enforcing a demand that the employer agree not to purchase products made in another city under a lower wage scale. The holding that these facts were insufficient to support the suit rested upon the ground that restraint of the commerce of a single concern did not have any actual or intended effect on market price or price competition and therefore was not, under the holding of this Court in the *Apex* case, a restraint of a kind prohibited by the Sherman Act. The question of the scope of labor's exemption under the Clayton Act was not reached.

II

THE CHARGE IN THE INDICTMENT THAT THE DEFENDANT MANUFACTURERS AND DEFENDANT UNIONS CONSPIRED TO PREVENT INTERSTATE SALE AND SHIPMENT INTO THE BAY AREA OF MILLWORK MADE UNDER A WAGE SCALE LOWER THAN THAT PREVAILING IN THE AREA, WITH THE PURPOSE AND EFFECT OF RAISING AND MAINTAINING PRICES IN THE AREA, SETS FORTH AN OFFENSE UNDER THE SHERMAN ACT.

All of the petitioners before the Court have challenged the sufficiency of the indictment. The first question presented in this connection is the meaning of the indictment. We agree that in passing upon this question it is necessary to look to the indictment as a whole and to construe its various allegations in relation to each other.

Paragraphs 26 and 27 of the indictment (R. 26-28) charge that, substantially all the manufacturers of millwork in the Bay Area and the labor organizations which control the supply of labor used by such manufacturers combined together to prevent sale and shipment to the Bay Area of millwork made in States other than California and to raise and maintain prices for millwork so shipped. The allegations of means used in effectuating the conspiracy establish that the defendant unions participated in this agreement to restrain trade in return for the defendant manufacturers' assent to wage demands made by the unions (par. 28 (a), R. 28). The agreement to exclude took the form of agreement that the defendant manufacturers would not purchase and that members of the defendant unions would not work upon material made in plants not conforming to the wage rates and working conditions established for the Bay Area by agreement between the two groups (pars. 28 (b), (c), R. 28-29). The agreement, although not in terms directed at out-of-State products, would necessarily bar purchase thereof or work thereon since the wage scale of the out-of-State producers of millwork is alleged to be lower than that of the defendant manufacturers (par. 6, R. 8). The conspiracy included joint action by the manufacturer group and labor group in policing and enforcing the non-purchase and non-work agreement (pars.

28 (d)-(g), R. 29-30). In furtherance of the conspiracy lists of "agreed prices" to be charged for millwork in the Bay Area were circulated among millwork purchasers in that area (par. 28 (k), R. 31-32).

It is alleged and admitted by the demurrers that, following formation of the conspiracy, the proportion of millwork used in the Bay Area coming from outside the State of California fell from 80% to less than 10% (par. 4 R. 6-7) and that, as a result of the conspiracy, millwork prices in the Area have been unduly increased (par. 30, R. 33).

The indictment thus alleges a combination having both the effect and purpose of restraining commercial competition, controlling supply, and raising prices in an interstate market. For the reasons already stated (*supra*, pp. 22-27), such a conspiracy apart from any exemptions given by the Clayton Act, clearly violates the Sherman Act. It is therefore unnecessary to consider whether the indictment is to be construed as charging "price-fixing". At the very least it charges a conspiracy having the effect and purpose of raising prices; of a kind held illegal in *American Column & Lumber Co. v. United States*, 257 U. S. 377.¹²

¹² This is the purport of the extracts from the Government's briefs in the district court and the court below, quoted by petitioners in No. 668 (Br. 7, 11).

We submit that the conspiracy laid in the indictment could be regarded as not within the Sherman Act only if it should be held that when union defendants are parties to a conspiracy in restraint of interstate commerce, the fact that the conspiracy may further some interest of labor makes the restraint *per se* reasonable and beyond the reach of the Sherman Act. Such a holding would, as we have previously indicated, be inconsistent not only with the express policy underlying the Sherman Act but also with the settled judicial construction of the statute.¹³

As to the effect of the Clayton Act, we submit (1) that the indictment sets forth a combination in which labor joined with management to restrain competition, control supply, and raise prices, and (2) that such a combination is not within the immunities given by Section 20 of the Clayton Act.

The indictment alleges that the defendant unions agreed to engage in activities designed to prevent sale and shipment of millwork into the Bay Area "in return for" the manufacturers' assent to the unions' wage demands (R. 28).¹⁴

¹³ *E. g., Ives v. Lavelle*, 208 U. S. 274; *Duplex Co. v. Deering*, 254 U. S. 443; *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Assn.*, 274 U. S. 37; *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295.

¹⁴ The indictment also alleges (R. 32):

"In joining the said combination, agreement, and conspiracy, and in performing and carrying out acts to effectuate the said conspiracy, the defendant unions were not attempting to enforce or protect the right to bargain col-

In effect, therefore, labor is charged with having agreed to give its aid in enforcing a ban against low-cost goods (made under a lower wage scale) in consideration of the manufacturers' acceptance of employment terms sought by labor. The reservation in the *Hutcheson* case concerning application of the Clayton Act when labor combines with a non-labor group to restrain trade (*supra*, pp. 29-30) would certainly seem to embrace combinations of labor and management having as their direct and primary objective restraint of the trade of third persons.¹⁵

lectively nor did they act in the course of a legitimate labor dispute as to wages, hours, and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the said combination and conspiracy was directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area and to maintain arbitrary, artificial, and non-competitive prices."

The allegation that the unions were acting "solely" to prevent the importation of millwork and to maintain noncompetitive prices is one of fact, admitted by demurrer. (Compare allegations contained in paragraph 28 (a) of the indictment, R. 28.) It differs from the kind of allegation made in the *Hutcheson* case (312 U. S. 219) and in the *Building and Construction Trades Council, United Brotherhood*, and *Red Carriers* cases (313 U. S. 539), that the respective labor union defendants were not, by their conspiracy, seeking a "legitimate" labor objective.

¹⁵ The sufficiency of the evidence to support the allegations of the indictment is not questioned. If, therefore, the validity of the indictment should be sustained, the petitioners who stood trial would be entitled to no more than a new trial if this Court should hold that the instructions to the jury were erroneous.

III

THE DISTRICT COURT DID NOT ERR IN INSTRUCTING THE JURY AS TO THE LIABILITY OF THE LABOR UNIONS FOR THE ACTS OF THEIR OFFICERS OR AGENTS

The labor union petitioners contend that the trial court gave erroneous instructions to the jury with reference to the liability of a labor union for the acts of its agents. The instructions on this point were as follows (R. 1137-1138):

You are to determine the guilt or innocence of a corporation by an examination of the acts done by its responsible officers or agents. The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation.

Likewise, the list of defendants includes a number of labor union organizations. It has been stipulated in this case that these labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that act, separately, and apart from the guilt or innocence of their members.

You are to determine the guilt or innocence of the labor unions which are de-

pendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents.

These instructions, which permit a labor union to be held responsible for what it authorized its officers to do, correctly apply the principles governing the liability of corporate and labor organizations. This Court noted in *United States v. White*, 322 U. S. 694, 702, that the actions of a member bind a union only when "there is proof that the union authorized or ratified the acts in question". This statement reaffirmed the rule previously laid down by this Court in the *Coronado Coal* cases,¹⁸ and given legislative sanction in Section 6 of the Norris-LaGuardia Act, 47 Stat. 71, 29 U. S. C., Sec. 106.

In the *Coronado* cases an international union was held not liable for the unlawful acts of members of a local, despite conduct by the international president supporting the local strike, because the international union's board had not authorized its president to support the strikers. In the first of the cases, the Court declared (259 U. S. at 395):

A corporation is responsible for the wrongs committed by its agents in the

¹⁸ *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344; *Coronado Coal Co. v. United Mine Workers*, 269 U. S. 295.

course of its business, and this principle is enforced against the contention that torts are *ultra vires* of the corporation. But it must be shown that it is in the business of the corporation. Surely no stricter rule can be enforced against an unincorporated organization like this. Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency * * *.

Section 6 of the Norris-LaGuardia Act provides:

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of such acts, or ratification of such acts after actual knowledge thereof.

This section was designed to insure the application of the doctrines of the law of agency, and not the principle of the law of conspiracy "that every member of a conspiracy is responsible for every act committed by any other member of the conspiracy" (75 Cong. Rec. 4693).¹⁷ It was evidently intended to prevent recurrence of decisions in which some courts had held unions and all their members re-

¹⁷ Statement by Senator Walsh of the Committee on the Judiciary.

sponsible for the unlawful conduct of a few members, even though the latter was contrary to the advice of the union officials and expressly disavowed. S. Rep. No. 163, 72d Cong., 1st sess., pp. 19-20; see Frankfurter and Greene, *The Labor Injunction* (1930) 74-75.¹⁸ The House Report explicitly stated that "this provision does not affect the general law of agency". H. Rep. No. 669, 72d Cong., 1st sess., p. 9. Senator Blaine, of the Committee on the Judiciary, declared that (75 Cong. Rec. 4629):

Section 6 is to extend the "sound law of agency which prevails in all other business transactions to the officers, the members, the agents of organized labor.

And Frankfurter and Greene said with reference to an identical precursor of Section 6: "This ap-

¹⁸ The judicial rulings responsible for the provision were described by Frankfurter and Greene as follows (pp. 74-75):

"* * * The union and its officers may repudiate the violent deeds, may solemnly disavow them, may importune the strikers to be orderly and law-abiding, and yet may be held. 'Authorization' has been found as a fact where the unlawful acts have been on such a large scale, and in point of time and place so connected with the admitted conduct of the strike, that it is impossible on the record here to view them in any other light than as done in furtherance of a common purpose and as part of a common plan; where the union has failed to discipline the wrong-doer; where the union has granted strike benefits. Other courts, contrariwise, have held fast to general agency principles and have exacted the full quantum of proof normally required to establish the responsibility of one person for the acts of another."

plies accepted doctrines of agency to labor litigation" (*id.*, at 221).

The pertinent phrase of Section 6 in this case is "actual authorization of such acts." We do not believe this means express permission to perform a designated particular act; if that were what Congress had intended, the sponsors of the legislation would not have declared that the provision merely embodied the accepted principles of agency. An agent is "authorized", or "actually authorized", to perform an act when he is expressly or impliedly told or advised by his principal that he may engage in conduct of a class which comprehends that act. As Senator Wheeler stated on the Senate floor in explaining the bill (75 Cong. Rec. 4937)

All we are contending with reference to the labor unions is that the labor unions shall not be enjoined because of the fact that somebody belonging to a labor organization does something that he is not authorized to do or something that is not within the scope of his employment.

A union cannot escape responsibility for the acts of officers authorized to enter into contracts for the union on the plea that only lawful contracts were authorized and that the charter does not expressly authorize the officers to violate the Sherman Act or any other law. A charter obviously never would contain such a provision, which would, in any event, be void. In short,

therefore, we submit that if an agent or official acts within the scope of his authority, that is, within the limits of what the principal or organization has authorized him to do on its behalf, he is doing what he has in fact or "actually" been authorized to do.

The charge to the jury permitted a verdict of guilty against the union defendant only if the jury found that the officers or agents had acted in behalf of the union and within the scope of their authority, or "while performing duties actually delegated" to them. This instruction is in accordance with the statutory requirement and the rule approved in the *Coronado* cases. If an act is "within the scope" of an agent's authority, he is actually authorized to do it. And the same clearly is true if he is "performing duties actually delegated to him".

The trial court did not commit error in refusing to give Requested Instructions Nos. 55, 56, and 57. Requested Instruction No. 55 was as follows (R. 1172-1173):

You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act.

This request was substantially in the terms of the Norris-LaGuardia Act. The action of the trial court in refusing to give the instruction was proper for, as we have shown, the instruction given was in substance the same as that requested (R. 1137-1138). Petitioners asked for instructions stressing the necessity for authorization by the unions of the acts of their agents and such instructions were given. Assuming that the instructions are correct and complete, the manner of phrasing them rests within the discretion of the court. *United States v. General Motors Corporation*, 121 F. 2d 376, 409 (C. C. A. 7), certiorari denied, 314 U. S. 618.

Requested Instruction No. 56 is substantially to the same effect (R. 1173). Requested Instruction No. 57 is similar, but raises the further question whether in order to impute liability to the international body its authorization must be express. In *Washington Gas Light Co. v. Lansden*, 172 U. S. 534, this Court held that the authorization of a corporation may be implied. The Court said (p. 544):

The corporation can be held responsible for acts which are not strictly within the corporate powers, but which were assumed to be performed for the corporation and by the corporate agents who were competent to employ the corporate powers actually exercised. There need be no written authority under seal nor vote of the corporation constituting the agency or authorizing the act.

But in the absence of evidence of this nature there must be evidence of some facts from which the authority of the agent to act upon or in relation to the subject-matter involved may be fairly and legitimately inferred by the court or jury.

New York Central R. R. v. United States, 212 U. S. 481, 493-494, is to the same effect.

United States v. International Fur Workers Union, 100 F. 2d 541 (C. C. A. 2), certiorari denied, 306 U. S. 653, does not support the petitioners' contention. In that case the trial court charged that a union would be criminally liable if its officers acted "upon behalf of the unions." As this instruction excluded the issue whether the union had authorized or ratified what its officers had done, the Circuit Court of Appeals correctly held it to be erroneous. Obviously the unauthorized action of union officers cannot be chargeable to the union even if done "upon behalf of the union." In the present case, on the other hand, the instructions specifically covered the question of authorization.

Truck Drivers Local No. 421, etc. v. United States, 128 F. 2d 227 (C. C. A. 8), also lends no support to the petitioners' argument. The court there held that where, under the rules of the general union, the acts of a division must be approved by the union to make them binding on that body, the general union was not liable under the Sherman Act for unapproved action of the division.

The court made it clear, however, that the union was liable for action it had authorized, whether expressly or impliedly. The court said (pp. 235-236):

To bind the union in a situation such as this, actual and authorized agency was necessary; mere apparent agency would not be sufficient to take the matter to the jury, unless the circumstances were so strong as competently to support an inference of actual authority.

We do not mean to imply that the union had to approve the action of the milkmen's division by formal motion or resolution. Such approval might perhaps legally be found to exist from actual knowledge and general sanction on the part of the union body of the efforts of the milkmen's division to cast the strength of the union into the situation.¹⁹

¹⁹ United Brotherhood (Br. p. 56) quotes out of context a statement in the concurring opinion of Clark, J., in *United States v. Local 807 of I. Brotherhood*, 118 F. 2d 684, 668 (C. C. A. 2), affirmed on other grounds, 315 U. S. 521. The full quotation is as follows:

"* * * I do not see how a conviction can be had against the unincorporated Local 807 under the Anti-Racketeering Act; in other words, 'person' in the act does not include such an amorphous group as this association of around 10,000 persons. It is hornbook law that, absent a clear legislative intent, an unincorporated association does not commit crimes, 7 C. J. S., Association, § 17, p. 43; and Congress has often shown that it knows how to include an association as a person when it so desires, as in the Sherman and Clayton Acts * * *." [Italics supplied.]

Section 6 of the Norris-La Guardia Act also provides that a labor organization shall not be responsible for the unlawful acts of its agents unless upon "clear proof" of actual authorization. This requirement, which applies to civil as well as to criminal cases, is, of course, no more stringent than the rule that guilt in a criminal case must be shown beyond a reasonable doubt. Yet the trial court in this case gave the customary charge as to proof beyond a reasonable doubt, and stated that "this rule applies to every material element of the offense charged", and also that this requirement "is to be considered in connection with and as accompanying all the instructions that are given to you". (R. 1145.)

Petitioners Alameda County Building and Construction Trades Council (No. 674) and United Brotherhood of Carpenters and Joiners of America (No. 666) also contend that there was no evidence from which the jury could have found that they were parties to the conspiracy.

With respect to Alameda County Building and Construction Trades Council, the evidence shows that it received letters from Local No. 550 referring to the agreement with the millmen (R. 446-447, 499, 499-500) and requesting the council's assistance in its enforcement (R. 446-447, 499). The minutes of the Council show that it agreed to do so (R. 499, 446-447), and in one instance at least actually participated in its en-

forcement, the representative of an Oregon firm being examined before the Council's Board of Business Agents for a hearing on whether the Oregon firm should be placed on the Council's "We do not patronize list" (R. 343, 345-347, 378-379).

With respect to the United Brotherhood, the evidence is as follows: Its constitution provides that the First General Vice-President "shall have charge and issue the label" (R. 413). In compliance with this provision, the written contracts of 1936 and 1938, each of which contained the restrictive agreement, were submitted to and approved by the First Vice-President (R. 414-415, 503-505, 444-446). The constitution also provides that the First Vice-President "shall have power to examine, approve or disapprove all local union, District Council, State Council or Provincial Council laws" (R. 413). In accordance with this provision there was submitted to the First Vice-President and, on May 26, 1939, approved by him, by-laws of Bay Counties District Council which provided in part (R. 416, 415):

Article II. Section 1. It is agreed by the District Council that, in conformity with the agreement between the mill owners and millmen, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing Trade Rules, or are paying less

than the wage scale hereinbefore quoted

Before approving the December 1938 agreement and the 1939 by-laws of the Bay District Council, the First Vice-President (and also the Second Vice-President) had been advised that the local unions were refusing to install millwork manufactured outside of California by a union shop paying lesser wages than those prevailing in the Bay Area (R. 480-485). The evidence also shows that the United Brotherhood sent a representative who participated in the negotiations which resulted in the December 1938 agreement (R. 1037-1038, 533, 388). We submit, therefore, that there was substantial evidence to support the finding of the jury that both Alameda and the United Brotherhood were parties to the conspiracy.

CONCLUSION

For the above reasons the judgment below should be affirmed.

Respectfully submitted,

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